



**Laws and Language in Québec**  
**The principles and means of Québec's language policy**

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*This study explains why Québec legislators have been led to protect the French language in Québec and gives a brief history of Québec's language legislation, the means it uses and its real scope. Moderate and modulated in the effects it has had, this legislation nevertheless competes with the federal government's language policy whose aims and principles are different.*

*The study also shows that Québec's language policy, far from being unusual, reveals the Québec legislator's constant concern with striking a fair balance between Quebecers' will to recognize French as their common language and the Anglo-Québec community's legitimate interest in ensuring the continuity of its presence and its institutions in Québec.*

The opinions expressed in this study are those of the author.

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**Laws and Languages in Québec**

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### **Introduction: From the legal country to the real country**

If there is a law in Québec that public opinion, political parties and the media have weighed, analyzed, defended, assailed, amended and gone through with a fine-toothed comb, it is surely the *Charter of the French language*. But despite immense publicity and unending discussion, the Charter's principles and aims are still not clearly understood. Why the Québec legislator decided to protect the French language may not be obvious from the perspective of a country where the relations between language and nation do not raise questions in the same terms as in Canada. Just what is the situation? Are the measures the Québec legislator has adopted to defend the French language as harsh as some say? Are the aims of this legislation so unusual? This is what should be examined, taking into account the political history of Québec and Canada and the status of the French language in Canada as well as the way the *Charter of the French language* is structured.

But first a linguistic portrait of Canada. Some distinctions must be made if one wants to grasp the weight of the French fact in Canada, the pressures that have been brought to bear on it and the unique character of Québec which forms a distinct national community within Canada. Journalist Charles Trueheart of *The Washington Post* wrote in July 1996 that unlike Canada which recognizes two official languages - English and French - , Québec recognizes a single language: French<sup>1</sup>. Mr. Trueheart is speaking here of the legal country. The *real* country is altogether different, and you cannot understand one without the other<sup>2</sup>.

The legal country is the country the constitution and legislation of Canada's eleven parliaments - the federal parliament and the ten provincial legislative assemblies - speak about. The real country is a vast territory inhabited by two national communities, one a majority and accustomed to seeing English as the country's predominant and usual language, the other, a minority located in Québec that has recently begun to stand up for the status and use of its language, a language that the forces of history would have eliminated

from the continent had it not been for the determination of Quebecers and unforeseen but favourable circumstances.

The Constitution of Canada has enshrined English and French as the country's official languages since 1982. But this declaration is valid only for the federal government and its institutions<sup>3</sup>. The ten provinces are free to grant French or English the status of an official language, or not to do so. Only New Brunswick has granted the two languages equal status<sup>4</sup>. In 1974, the Liberal government of Robert Bourassa made French the official language of Québec<sup>5</sup>. This declaration did not turn Québec into a unilingual French province. Since Canada was created in 1867, the Constitution has made Québec subject to certain obligations regarding bilingualism: it must adopt its laws in French and in English and guarantee parliamentarians, judges, litigants and parties to a legal proceeding the use of the two languages<sup>6</sup>. Moreover, the Constitution guarantees that Québec must maintain confessional schools, both Catholic and Protestant, a system that has given Anglo-Quebecers great control over their schools<sup>7</sup>.

The provinces of Manitoba, Alberta and Saskatchewan were also subject to the bilingualism of legislation and the courts, but they soon stopped complying with it. Manitoba declared English the province's sole official language in 1890<sup>8</sup>. After having adopted its laws in English only for a long time, Manitoba was brought to order by the Supreme Court in 1985 when it ruled that the province could not overstep the bounds of the Constitution<sup>9</sup>. Alberta and Saskatchewan did not comply with the bilingualism of legislation and the courts after their creation in 1905. The Supreme Court ruled, however, that this violation was without consequence, because the assemblies of these provinces were at liberty to abolish bilingualism<sup>10</sup>. The two provinces discharged themselves from the obligation, making French at the most an optional language for parliamentary debates, legal proceedings and legislation<sup>11</sup>.

That is the legal country. Now for the real country. It is not made of equality and symmetry. The situations of the English and French languages are very dissimilar. Outside Québec, French is the language of the minority. In Ontario and New Brunswick, francophones form large communities that are sufficiently numerous and concentrated to have a certain French-language social life in terms of education, health services and culture. In 1991, francophones (of French mother-tongue) comprised 33.9% of the population of New Brunswick, or 242 630 Acadians, and 4.1% of the population of Ontario, or 376 825 Franco-Ontarians<sup>12</sup>. Francophone minorities have marginal weight elsewhere in Canada. They comprise barely 1.5% of the population of British Columbia, 4.4% of Manitoba and 0.5% of Newfoundland. Social and economic life is almost exclusively in English except in some isolated communities. There is some bilingualism in federal institutions across the country - government services, postal services, airports, etc. - but only 30% of federal public servants are bilingual and most of them work in the Ottawa region, the federal capital<sup>13</sup>.

In Québec, on the other hand, francophones form a clear majority of 82.1%, and Québec's French face is being affirmed in all aspects of social and economic life<sup>14</sup>. Quebecers whose mother-tongue is English comprise 9.6% of the population, while another segment of the population is composed of recently immigrated Quebecers whose mother-tongue is neither French nor English. Québec anglophones live mainly in the Montréal area where they represent 19% of the population. While anglophones are a numerical minority in Québec, they enjoy a highly developed network of public services financed by the Québec government which allows them to be educated and cared for in English. With their own schools, colleges, universities, hospitals, radio and television stations, theatres and motion picture theatres, they can, if they wish, live entirely in English, especially in Montréal.

Ninety percent of Canada's francophone population lives in Québec, but Québec's population accounts for only one quarter of the federation, or 7 387 000 out of 29 963 000 people as of July 1996<sup>15</sup>. Francophones outside Québec comprise just 5% of the population of the rest of Canada, and all signs point to a continuing decline. Nearly one-third of Québec francophones know English; only 9% of Anglo-Canadians outside Québec say they know French. In Montréal, 46% of francophones and 60% of anglophones are bilingual<sup>16</sup>.

If Canada were divided into linguistic zones, there would be three zones<sup>17</sup>. First, a francophone zone comprising Québec and parts of Ontario and New Brunswick where French has been preserved - with difficulty in Ontario - and where, in the case of Québec, it has become what holds national life together. Then an anglophone zone comprising Canada outside Québec, where English predominates and where, according to all demographers and statisticians<sup>18</sup>, francophone minorities are being assimilated, still being subjected to what historian Blair Neatby called a process of *anglo-conformity*<sup>19</sup>. Finally, a zone of intercultural contact comprised mainly of cities such as Ottawa, Montréal and Moncton where the French and English cultures rub shoulders daily, though not always on equal terms. Montréal is probably the only large city in Canada where the two language communities have co-existed for more than two centuries, living and prospering in their respective languages even when co-existence created tensions.

In brief, the real country is altogether different from the legal country. Canada is no more a bilingual federation than Québec is a unilingual province. Bilingualism, the official policy of the federal government, is an ambition more than a reality, and many in Canada as in Québec question its validity or effectiveness<sup>20</sup>.

## A. Why Québec has a language policy

### 1. The precariousness of the French fact in Canada and North America

The main reason Québec governments have taken steps to protect the French language in Québec is their observation that the French language, a minority language in North America and Canada, is too precarious to develop without state support. Although francophones are the majority in Québec, their language's power of attraction is weak. English, the continent's usual and predominant language, the language of both commerce and culture, vies constantly with French to be the language of business and communications. The French fact in North America is precarious for several reasons: (1) the Conquest of 1760, which put an end to French colonization in North America; (2) the progressive assimilation of francophones outside Québec and the inadequacy of language rights; and (3) the delicate balance of the French fact in Québec because of the lower birthrate and the contribution that immigration continues to make to Québec's demography.

### Unforeseen consequences of the Conquest of 1760

It was decisive for the future of French in North America and probably for the French language in general when the colony of New France fell into the hands of the English in 1760<sup>21</sup>. The final ceding of New France to the British crown in 1763 put an end to two and a half centuries of French settlement in North America. Sixty thousand French colonists suddenly found themselves a conquered people, subject to a foreign language, religion and legal system. After the Seven Years' War, it could have been expected that New France would suffer the same fate as the former Dutch and Swedish colonies on the American east coast. As historian Michel Brunet noted:

*The evolution of this new British colony, it was felt, would be similar to that of New York, first settled by Dutch colonists, and of New Jersey, which had been founded by Swedes. In less than a century, these two distinctive collectivities had melted away. The British conquerors of the St. Lawrence Valley sincerely believed that a similar fate awaited the Canadiens<sup>22</sup>.*

England quickly exercised its rights as a conqueror. British subjects came by the thousands to settle in the new colony called the *Province of Québec*. In 1791, London divided the colony in two, reserving one part, Upper Canada, for some 10 000 of its colonists, and the other, Lower Canada, for the 150 000 *Canadiens* living in the St. Lawrence Valley. Although they were granted a legislative assembly with limited powers, the *Canadiens* were still in a position of economic and social inferiority. The predictions of foreign observers on their chances for cultural survival were not very optimistic. Benjamin Franklin predicted:

*In less than a half century, because of the mass of Englishmen who are settling around and among them, they are destined to mix with and become part of our people in both language and mores..(free translation).<sup>23</sup>*

Alexis de Tocqueville, the acclaimed author of *Democracy in America*, visited Lower Canada in 1831. He wrote:

*But it is easy to see that the French are a conquered people. The rich classes belong for the most part to the English race. While French is spoken almost universally, most newspapers, signs and even French merchants' signs are in English. Commercial enterprises are nearly all in (English) hands (free translation).<sup>24</sup>*

In 1837-1838, ideas about democracy and a republican government stirred Lower Canada. The Patriote party of Louis-Joseph Papineau headed a protest movement against the hold London had on its colony's affairs. London's refusal to bring in a truly constitutional and responsible government gave rise to an insurrection in the colony that was quickly put down. London concluded from this popular uprising that it should force the assimilation of *Canadiens* of French extraction by uniting the two colonies. In 1840, it decreed this union and imposed equality of representation for the former Upper Canada and the former Lower Canada in the single parliament, even though the *Canadiens*, who numbered 650 000, were the majority, Upper Canada's population being 450 000.

Because of massive immigration by colonists from the British Isles, the population of British extraction grew larger than that of the French Canadians. When the Dominion of Canada was created in 1867, French Canadians comprised only one-third of the population of the new quasi federation.

By obtaining a legislative assembly, a province and local autonomy in 1867, French Canadians recovered the little collective freedom they had had before 1840. A minority condemned to assimilation, they thought they had acceded to the status of a founding people, equal as of right to English Canada. With the confederative pact, this minority people hoped to preserve their language, their culture and their civil institutions.

Thanks to a birthrate unparalleled in the West, the population of French extraction managed to increase in the 19th century. History belied Franklin's and de Tocqueville's pessimistic predictions. Between 1881 and 1961, the population of French origin maintained its weight - about 30% - in the country's total population<sup>25</sup>, despite the creation and addition of new provinces and the colonization of new territories by immigrants from around the world.

The proportion was maintained, but at a price. The federal government pursued a policy of massive immigration at the turn of the century in order to develop the country's economy and settle its vast territories. Between 1896 and 1914, Canada welcomed more than three million British, American and Eastern European immigrants.<sup>26</sup> A large number settled in Western Canada. Many poor and unschooled French Canadians may have wanted to emigrate there, too. But with little encouragement to locate in the West<sup>27</sup>, about 450 000 crossed south over the Canadian-American border between 1890 and 1920<sup>28</sup>.

### **The progressive assimilation of francophones outside Québec and deficiencies in language rights**

French seems destined for marginal status outside Québec. It took a long time for francophone minorities to get recognition for their situation as imperilled minorities and to get the rather lukewarm support of governments. Having long been deprived of public services in French, they had to integrate into milieus where French met with indifference, even hostility.

Figures on the rapid assimilation of these minorities speak for themselves<sup>29</sup>. In 1931, 7.2% of the population of Canada outside Québec had French as a mother-tongue. This proportion dropped to less than 5.0% in 1991. If you look at language of use rather than mother-tongue, the proportion of francophones outside Québec declined from 4.4% to 3.2% between 1971 and 1991. Rapid assimilation seems to be running unabated in some provinces. The proportion of Ontarians for whom French is the usual language fell from 4.6% to 3.2% between 1971 and 1991. In Manitoba, it slipped from 4.0% to 2.4% in the same period, and in Saskatchewan, from 1.7% to 0.7%. Only the Acadians of New Brunswick seem to be resisting assimilation, their share in the province's population having stabilized at about 31%.

This assimilation reveals the inadequacy of the legal and constitutional provisions introduced to protect francophone minorities since 1867. Manitoba declared itself a unilingual English province in 1890, even though its constituent law had prescribed bilingualism for legislation and the courts and guaranteed Franco-Catholic schools provincial government support. In 1896, the Manitoba government had to concede to its francophone minority the right to instruction in French; this was withdrawn in 1916, however, and French disappeared from Manitoba schools. In 1897, Ontario made English the only language of the justice system. In 1913, it severely reduced the teaching of French in Catholic confessional schools (Regulation 17), to the great displeasure of Franco-Ontarians who saw this as the sign of a deliberate policy of assimilation.

Manitoba and Ontario have since restored some of their minorities' rights, but only several decades after the introduction of linguistic unification measures. It may have been too late. As William Tetley, former Liberal minister in the Bourassa government and McGill University law professor, observed in 1982, the Constitution of Canada and the courts have done little to protect the language and culture of francophone minorities:

*It is clear that the Canadian Constitution has done very little to promote or protect Canada's two great languages which should have been - and should be today - a great national asset. The British North America Act, 1867, failed to protect the French language and culture which were violated in such judgments as Ottawa's Separate Schools Trustees v. MacKell or such legislative action as Manitoba's Official Language Act, 1890, and Regulation 17 of Ontario.*

*The Constitution as interpreted by the courts should have provided a high standard of conduct, a spirit of natural justice, and a tradition of fair play. Instead, there was often harshness and no apparent legal recourse. It was only in the 1960's that political action in Québec, beginning with the Quiet Revolution, brought about change*<sup>30</sup>.

The realization that francophone minorities in Canada are slowly but perhaps inexorably being assimilated has contributed to making the need to support the French language in Québec more acute.

### **How the French language has fared in Québec**

Threatened, losing momentum outside Québec, the French language seems to have had more stability in Québec. The percentage of Québécois with French as their mother-tongue remained constant from 1951 to 1991, decreasing from 82.5% to 80.7% from 1951 to 1971 and increasing to 82.1% in 1991<sup>31</sup>. In the same period, the percentage of anglophones decreased from 13.8% to 9.6% and the percentage of allophones - those whose mother-tongue is neither French nor English - increased from 3.7% to 8.3%. French as the language of everyday use stayed at the level of 83% of the population.

If these statistics speak to the vitality of the French language in Québec, they should not let us forget the immediate reasons for its precariousness. Québec's demographic weight within Canada has declined progressively since 1931, from 27.7% to 25.8% in 1986<sup>32</sup> and to 25% today. Between 1875 and 1965, Québec's fertility rate was higher than those of other North American regions<sup>33</sup>. Beginning in the 1960s, however, Quebecers, setting aside the Catholic church's support for a high birth rate and espousing more modern mores, began to produce fewer offspring. The outcome was that their birth rate became one of the lowest in the Western world. From 1956 to 1961, French-speaking Québec women had a fertility rate of 4.2 (4.2 births per woman of childbearing age). The rate dropped to 2.3 for 1966-1971 and then to 1.5 for 1981-1986 before rising to 1.6 in 1990, which is barely enough to replace the population, the rate of 2.1 being required to ensure replacement. Québec anglophones also experienced a less dramatic decline in their fertility rate which is now about on a par with that of francophones<sup>34</sup>. The low fertility rate worries many Quebecers who fear that Québec's demographic weight is continuing to decline and that the proportion of francophones in Québec is being eroded.

On top of this is the fear that immigrants who have settled in Québec in large numbers since the turn of the century prefer English to French as the language of communication and culture. The proportion of Quebecers of other than French or British extraction was 1.6% in 1871 and 8.6% in 1961. As long as their exceptional fertility compensated for the arrival of immigrants, the francophone majority did not feel threatened. When their fertility began to decline, however, Québec's linguistic balance became shaky. This realization was heightened in the 1960s, a time when immigrants were free to choose their schools and laissez-faire was the practice for commercial signs. Over 85% of immigrants opted for English-language schools in the late 1960s<sup>35</sup>. Statistics show that more and more ethnic minorities adopted English at the expense of French. While 48% of these minorities in Québec were drawn to English in 1931, the proportion had risen to 69.6% by 1961<sup>36</sup>.

### **2. The will the majority of Quebecers have affirmed since the 1960s to take control of their social, economic and cultural life and to make French the common and usual language of Québec**

The precariousness of French in North America does not explain everything. The assimilation of francophones in Canada must cease being a hidden reality and governments must find a remedy for it. Although Québec had every reason to be concerned about the future of French culture and language, Québec governments did not choose to legislate between 1867 and 1964. Laissez-faire took the place of policy. What changed in the early 1960s was the perception Quebecers had of themselves and what they could achieve through their political institutions. Since the Conquest of 1760, French-speaking Quebecers had grown accustomed to living under the authoritative power of the Catholic church which attended to preserving the language and the religion of the faithful. Quebecers saw themselves as belonging to a French-Canadian, minority and agrarian people, with religion and tradition serving as a bulwark against assimilation. Beginning in the nineteenth century, however, they experienced the industrialization of the economy, and in the early twentieth century, they asserted themselves as an urban people who, after World War Two, discovered the consumer society and modernism.

From the 1960s on, Québec society was swept by the winds of change that transformed it profoundly. Many of the ideas that had been talked about in Québec for decades were translated into political reforms. Quebecers urged their provincial government to raise the

general level of education and to provide the population with public services worthy of a modern society. Many also discovered that although francophones were the majority in Québec and in Montréal, English was the language of prestige, business and public signs and that many company doors were closed to them. This was noted by two government commissions of inquiry on the status of French. In Montréal, immigrants' enthusiasm for English-language schools aroused fears among francophones and fueled heated debates. Francophones saw this tendency as a sign that if nothing was done, French would continue to decline in Montréal, as Marc V. Levine, a University of Wisconsin-Milwaukee specialist in urban issues, wrote:

*By the 1960s, the Anglicization of the city's school clientele seemed to portend a Montréal in which the children of immigrants would become Anglophones and French-speakers would ultimately become a demographic minority. Thus, for important segments of the Francophone community, the individual right of parents to choose their children's language of schooling, historically respected in Québec, now clashed with the 'collective right' of Francophones to survive and prosper as Francophones. In the eyes of Montréal's rising Francophone elite, the new middle class of teachers, journalists and policy professionals who had displaced traditional church elites as the leading force in French-Canadian society, Francophone minorisation in Montréal would spell ultimate doom for a living French language and culture throughout Québec<sup>37</sup>.*

The slogan *Maîtres chez nous* (masters in our own house) used by the Liberals of Jean Lesage during the 1964 electoral campaign captures the spirit of the times, enamoured of change and progress. Opening careers in the public service and in companies to francophones, expanding the means of the Québec State, giving it the stature and structure of a modern government, separating Church and State more appropriately, reforming education, nationalizing electricity, providing Québec with a universal pension plan and more - that was the program and the ambition of the governments of the time, driven by the people's impatience and expectations. Quebecers then discovered a springboard for their economic and social progress in their democratic institutions, as Premier René Lévesque wrote in 1979:

*The central fact of language makes Québec the one Canadian province out of ten which is radically (in the root sense of the word) different from the rest of Canada. It makes Québec the home base, the homeland, of a compact, very deeply rooted, and rapidly evolving cultural group - there should be no mistake - which sees itself as a national group. Democratic control of provincial institutions in Québec supplies the Québec people with a powerful springboard for self-affirmation and self-determination<sup>738</sup>.*

This was also a time when francophones, having long defined themselves by their religious affiliation and their French origin, began to identify themselves in terms of language and the Québec territory. Quebecers stopped seeing themselves as a linguistic minority and learned to think of themselves as a political majority. They also began to demand protective measures for the French language from Québec and federal legislators.

Two commissions of inquiry blazed the trail for the language legislation we now have. In 1963, the federal government of Lester B. Pearson created a royal commission of inquiry - the Laurendeau-Dunton Commission - whose mandate was to review the existing "state of bilingualism and biculturalism in Canada" and to "recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races." After holding hearings across the country, the commissioners concluded in their preliminary report in 1965 that Canada "without being full conscious of the fact, is passing through the greatest crisis in its history." The Commission noted how deeply dissatisfied francophones were, convinced they were victims of unacceptable inequalities. The Commission's work demonstrated that francophones were not playing a role in the economy that was proportional to their real weight. It was shown that Anglo-Canadians of British origin dominated the economy; they held the most influential and best paid positions. In Québec, the French Canadian had an income 35% lower than the Anglo-Quebecer. And even bilingual Quebecers earned less than unilingual Anglo-Quebecers. The commission consequently recommended that "in the private sector in Québec, governments and industry adopt the objective that French become the principal language of work at all levels.<sup>39</sup>"

Seeing Québec as a model of an officially bilingual society, the Commission recommended that French and English become the official languages of Canada and that New Brunswick and Ontario make them so at the provincial level. Finally, it proposed the creation of "bilingual districts" where French and English would be used currently in educational and municipal institutions when the minority reached ten percent of the population. In the opinion of Jean-Claude Corbeil, former linguist at the Office de la langue française:

*...you can say that the Commission made it obvious to Quebecers that the rules of the game on the use of French and English in Québec, especially in the work world, had to change and gave rise to the idea of setting by law the conditions for using one or the other language in order to guarantee a better status for the French language in all areas and more favourable conditions for its development, its growth and its advancement<sup>40</sup>.*

The provincial Gendron Commission was created in December 1968 to "enquire into and report on the status of French as a language of use in Québec." Its report was tabled in 1972. Like the Laurendeau-Dunton Commission, the Gendron Commission noted the domination of the English language in Québec's work world. Numerous inequalities separated francophones from anglophones: francophones earned less in general, held less important positions, benefitted little from their bilingualism and often worked in English, in a proportion that did not reflect the high number of francophone workers. The Commission recommended that a series of measures be adopted to make French the common language of Quebecers. The commissioners summarized the reasons as follows:

*In America, French is a fringe language. As such, its use is restricted even in areas where it is spoken by a majority of the population. This situation requires a clear policy: French can survive and flourish on the North American continent only with a maximum of opportunity and protection throughout Québec; and this can be accomplished only by making it a useful communication instrument for all the people of this area.(...)*

*In the vast economic areas made up of Canada and the United States, French is defenseless in the struggle to impose its utility. This situation is not about to change. Thus in Québec, the vigor and dynamism of French can be ensured only through government support. Failing this, the odds in the match between French and English will remain too one-sided.*

*This government action should aim at establishing French as the common language of Québecers by making it useful and necessary for everyone in work communication<sup>41</sup>.*

The Commission recommended that the National Assembly declare French the official language of Québec, and English and French the national languages; that the government take steps to make French the language of internal communications in Québec in the work place and the language of communications in the government, professional corporations and parastatal institutions; that the right of the francophone consumer to be served in his language be recognized and that commercial signs be regulated in order to make the use of French mandatory.

## **B. A brief history of Québec's language policy**

Québec's first law of a linguistic nature was timorous. It created the Office de la langue française in 1961. The Bertrand government adopted Québec's first language law in November 1968, the *Act to promote the French language in Québec* (Bill 63)<sup>42</sup>. This legislation had contradictory aims. On the one hand, it called on school boards to provide instruction in French; on the other hand, it gave parents free choice in the language of instruction, with school boards having to guarantee children registered in English-language classes a knowledge of the use of the French language. This law also charged the authorities of Québec's immigration department with seeing that immigrants settled in Québec learned French. But Bill 63 did not seem able to maintain the delicate linguistic balance in Québec, especially in Montréal, where English-language schools attracted many immigrants and where the free choice of the language of instruction had set anglophones, allophones and francophones against one another.

It was the Liberal government of Robert Bourassa that adopted the first language law where the Québec legislator affirmed his will to improve the status of French in social life. He drew his inspiration from some of the Gendron Commission's recommendations and, unlike the artisans of Bill 63, he was of the opinion that language policy could not be based on incentive alone but should also include coercive measures. Assented to in July 1974 after a 92 to 10 vote in the National Assembly, the *Act respecting the official language* (or Bill 22)<sup>43</sup> set out the Québec legislator's intention clearly in its preamble:

*..the French language is a national heritage which the body politic is in duty bound to preserve, and it is incumbent upon the government of the province of Québec to employ every means in its power to ensure the preeminence and to promote its vigour and quality.*

This law broadened the aims and scope of Québec language legislation considerably. For the first time in its history, the National Assembly declared French the official language of Québec. Henceforth, the French language would be the Québec government's language of communication; workers would be able to communicate among themselves and with their supervisors in French. The



French language should become omnipresent in the business world for company management, corporate names, public signs and contracts. As for instruction, Bill 22 maintained the principle of free choice, but tempered it. Parents continued to have free choice, provided their children had a sufficient knowledge of the language of instruction. The law prescribed language tests to evaluate pupils' knowledge. Test results would determine a pupil's enrollment at an English or French school. Finally, the government was endowed with agencies to apply and oversee the law. The law created a Régie de la langue française (French language board), responsible, among other things, for the application of the prescribed francization program for companies. Régie investigator-commissioners would note failure to comply with the law and notify the government. The government was also empowered to create terminology commissions to standardize the use of the French language.

If Bill 22 was the first sign of the Québec legislator's will to actively defend French, it did not succeed in establishing consensus on how to implement policy. Making children take language tests and francizing business firms ran into strong resistance in the anglophone community and among immigrants. Francophones saw the law as a loyal attempt at linguistic reform. Some, however, saw it as an inapplicable law that went only half way and failed to give French the primacy it was due.

Shortly after its accession to power in November 1976, the Parti Québécois government announced it intended to revise Bill 22.<sup>44</sup> In April 1977, the Minister of State for Cultural Development, Camille Laurin, tabled a White Paper on Québec's French language policy in the National Assembly<sup>44</sup>. The government announced in this document that it would make language a priority in its legislative program and that its language legislation would take the form of a Charter.

The White Paper identified several pressing reasons why the Québec state was justified in taking on the task of redressing the situation of the French language in Québec. On the basis of an analysis of demographic trends, the White Paper concluded that francophones would be less and less numerous in Canada as well as in Québec. The great propensity immigrants had to integrate into the minority anglophone group would hasten this decline. In the corporate world, French would still be the language of lesser jobs and lower incomes and English, the language of business, would still govern communications at work. Nor could Quebecers count on help from the Canadian Confederation or the federal government which had not been able to keep francophone assimilation in check. Finally, the White Paper noted that many Quebecers were dissatisfied with the quality of the French language in Québec and had settled their hopes for improving its status, use and quality on the Québec state.

The government set out the principles of its language policy in the White Paper. First of all, language is not simply a mode of expression whose uses should be regulated. Granting a language the protection of the law involves seeing to the "quality of the habitat, of which language is a major component." Then, though he may take steps to plan for the French language in Québec, the Québec legislator intends to respect minorities as well as their languages and cultures. The government recognized that "an English population and an English culture exist in Québec" and "this population and this culture constitute an irreducible component of our society." The government recognizes the valuable contribution of other languages and minority cultures to Québec society, but insists that these minorities acquire sufficient knowledge of the national language to foster their integration into society. Another principle: the promotion of French as the national language does not in any way keep Quebecers from learning a second or third language. Finally, enhancing the status of the French language is a question of social justice, that is, it is important that French no longer be an impediment to employment and wealth. "What Québec's French-speaking majority must do," the document states, "is reassume the power which is its by right, not in order to dominate, but to regain the status and latitude proper to its size and importance."

In late April 1977, the government tabled a bill called the *Charter of the French language* (or Bill 101) in the National Assembly. It was adopted on August 26, 1977.<sup>46</sup> The preamble to the Charter sets out the Québec legislator's principles of action. It states that the French language, "the distinctive language of a people that is in the majority French-speaking, is the instrument by which that people has articulated its identify." The National Assembly indicates its resolve "to make of French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business." It recognizes the valuable contribution of the ethnic minorities to the development of Québec and the right of the Amerindians and the Inuit of Québec to develop their language and culture of origin. (Since 1983, the preamble has specified that the National Assembly intends to pursue the Charter's objective with all due respect for the Québec English-speaking community's institutions.<sup>47</sup>) It also points out the "obligation of every people to contribute in its special way to the international community."

Within its purview, the Charter of 1977, like Bill 22, proclaims that French is the official language of Québec. It then enumerates a series of "fundamental language rights", such as the rights of workers to carry on their activities in French, and of consumers of goods and services to be informed and served in French. French is recognized as the language of the legislature and the courts in Québec, although judgments and proceedings may be in another language, if the parties so agree. The French language becomes the language of communications of the government, its departments and affiliated agencies as well as of government-owned firms and the

professional corporations. The administration of municipal, school and health bodies may be carried out in both French and another language if these bodies serve a clientele where more than half speak a language other than French.

As for commerce and business, French becomes the mandatory, but not the exclusive, language for labels and the only language for signs and posters and commercial advertising. In making an exception to the principle of unilingual French signs and posters, the 1977 law authorizes firms employing not more than four people to display signs and posters in both French and another language, provided that French is at least as prominent as the other language. The same kind of exception applies to the cultural activities of ethnic groups and advertising by non-profit organizations. The law also makes French the only language for firm names, bilingualism being accepted for the legal names of ethnic non-profit associations.

Finally, the Charter of 1977 abolished the eligibility criteria for English schools prescribed by Bill 22. Henceforth, a child whose father or mother received his or her elementary instruction in English in Québec could receive instruction in English, as could a child whose father or mother, on the date of the coming into force of the law, had received such instruction elsewhere in Canada and those already enrolled at English schools, and their younger brothers and sisters. An appeals committee hears the appeals of parents who feel their children should have been found eligible for instruction in English.

In addition to the appeals committee, the Charter of 1977 created five agencies responsible for its implementation. The *Office de la langue française* defines and conducts Québec policy on linguistics research and terminology, authorizes municipal and semipublic agencies serving a population with a majority that speaks a language other than French to operate internally in more than one language, and administers the process of francisizing business firms. This program covers all firms with fifty or more employees, and its aim is to certify that the use of French is generalized at all levels of operation. Firms may bring an appeal from an Office decision before an appeals committee. The *Commission de toponymie* is concerned with the cataloguing, rules of spelling and assignment of place names. The *Commission de surveillance* ensures compliance with the law and inquires into failures to comply brought to its attention by a third party or discovered by commission inspectors. Lastly, the *Conseil de la langue française* advises the government with regard to the situation of the French language in Québec and on questions relating to the interpretation and application of the *Charter of the French language*.

Reactions to the Charter of the French language have differed greatly. Several groups and associations for the defense of French saw the proclamation of this Charter as a historic event. The government thought it would have strong support for its action from francophones. Reactions among anglophones ranged from prudent acceptance to open opposition, and the Charter was no sooner assented to than representatives of the anglophone community were planning to challenge its validity in court.

Legal challenges have marked the life of the *Charter of the French language* and, as court rulings have come down, have limited its scope. Several lawsuits were taken as far as the Supreme Court of Canada, thereby helping to politicize the legal challenge and attracting attention throughout Canada.

Thus the Supreme Court ruled in 1978 that the National Assembly could not declare French the only language of legislation and the courts<sup>48</sup>. The Constitution that underlay the creation of Canada in 1867 bound Québec to comply with bilingualism in enacting laws and for judicial proceedings, and this obligation extended beyond legislation as such to all normative texts emanating from the government<sup>49</sup>.

Some major events that were decisive for the future of the *Charter of the French language* and Québec occurred in 1982. Canada proceeded with a major reform of its Constitution and the federal system. In so doing it left Québec out in the cold, imposing its reform despite Québec's manifest disagreement. Québec suffered a loss of status and jurisdictions that affected the continuity of its institutions for the second time since the Conquest of 1760. The reform gave Canada a *Charter of Rights and Freedoms*, left to the interpretation and the sanction of the courts of the entire country, and enshrined the language rights of the official language minorities in the Constitution. These rights were drawn up in a manner that gave minorities - francophone outside Québec, anglophone in Québec - the right to have their children instructed in their language in public schools financed by the province<sup>50</sup>. When numbers so warranted, the minorities also obtained the right to manage their schools. Applicable throughout Canada, these constitutional rights set their sights specifically on Québec's language legislation.

The *Canadian Charter of Rights and Freedoms* soon had an impact. In 1984, the Supreme Court ruled that Québec could not restrict access to English public schools only to children whose parents had attended elementary school in English in Québec. The Canadian Charter extended this right to all parents who had received their elementary instruction in English in Canada<sup>51</sup>. In 1988, the Court ruled that the National Assembly of Québec could no longer require that public signs and commercial advertising be solely in French

and that only the firm name in French be legal<sup>52</sup>. In the Court's words, these requirements infringed on the freedom of expression guaranteed by the Canadian Charter, even if the holder was a business corporation. Moreover, they ran counter to the right of equality. While the Court recognized a legitimate legislative aim in the project to ensure the quality and advancement of the French language, it seems, in the words of law professor Ghislain Otis, that it gave scarcely any weight to the veritable social project inherent in Bill 101, namely, promoting French as the common language. The Court recognized that the Québec legislator could legitimately take steps to make the "linguistic face" of Québec reflect the predominance of French, without recognizing the prescription of unilingualism in public signs as a necessary measure for achieving Bill 101's objectives.<sup>53</sup> Nonetheless, the Court indicated that making it mandatory that the French language predominate, even markedly, on signs and posters would be compatible with the Québec and Canadian Charters<sup>54</sup>.

Following this judgment, the Liberal government of Robert Bourassa adopted a law in December 1988 removing the *Charter of the French language* from judicial control - the Canadian Constitution authorized this kind of override for a period of five years<sup>54</sup> - and amended the rules for public signs<sup>56</sup>. The rule of French unilingualism continued to prevail for public signs and commercial advertising outside establishments. Inside, however, the use of another language was permitted, provided that French was visible in a markedly predominant manner. There were exceptions to this kind of bilingualism, franchise companies employing between five and 50 people and shopping centres being subject to a stricter regime.

On March 31, 1993, the United Nations Human Rights Committee, a body instituted by the International Covenant on Civil and Political Rights, announced its "findings" with regard to complaints lodged by anglophone businessmen from Québec. The committee recognized that it is legitimate for a state to choose one or several official languages, especially to protect a minority in a vulnerable situation such as francophones in Canada. However, it saw the rules of Bill 101 prescribing unilingual signs, even amended by Bill 178, as an infringement on the freedom of expression the Covenant sanctioned. None of these rules created discrimination based on language nor did they infringe on the rights of minorities the Covenant recognized. Anglophone Canadian citizens cannot, in fact, be considered a language minority, since they are a majority in Canada<sup>57</sup>.

The government amended the *Charter of the French language* once again, adopting a law (Bill 86) in June 1993 that reformed the public signs and posters and commercial advertising regime<sup>58</sup>. From then on, they could be in French and another language, provided French was "markedly predominant". The law gave the government power to determine the situations in which public signs and commercial advertising must be in French only, where French has to predominate or where signs, posters and advertising may be in another language only.

On June 10, 1996, Louise Beaudoin, Minister of Culture and Communications and Minister responsible for the *Charter of the French language*, announced her government's new intentions in the matter of language. She tabled the *Act to amend the Charter of the French language* (Bill 40) in the National Assembly and unveiled a language policy proposal to be based on consultation<sup>59</sup>. In the Minister's words, *the guidelines and actions proposed in the consultation document comprise a new language contract based on the affirmation of French, a French of quality, as a common language and language of convergence that will enable us to build the future of Québec together, with due respect for the rights of the anglophone community and Aboriginal nations*. The Bill would revive the former Commission de protection de la langue française abolished in 1993, and would add some provisions on marketing certain products, including computer software, which must be made available in French unless no French version exists.

In November 1996, the Québec government unveiled a policy designed to enhance the use and the quality of the French language in Québec's public administration so that its activities reflect the fact that French is both the official language and the usual, everyday language of public life.<sup>60</sup>

It is in the tradition of the Québec legislator to refer major reforms to public consultation by way of the National Assembly's standing parliamentary committees. These committees hold public hearings where associations and citizens concerned with these reforms can make their opinions known. The National Assembly's committee on culture began public consultation on Bill 40 and the proposed language policy in August 1996.

**C. Language legislation on commercial signs, the language of instruction and the language of work: the Québec legislator's concern for striking a fair balance between promoting the French face of Québec and minority rights**

## 1. The scope of Québec legislation

The *Charter of the French language* regulates the use of languages only in their public aspect. As the language policy proposal tabled in September 1996 specified, *in a democracy such as ours, the personal use of the language of one's choice is a fundamental right* guaranteed by the *Charter of Human Rights and Freedoms* the Québec legislature adopted in 1975<sup>61</sup>. The private use individuals make of a language in their interpersonal relations or to express their opinions through a print, electronic, radio or television medium lies entirely outside the bounds of the law.

It should also be noted that the *Charter of the French language* covers only areas of activity that fall within the jurisdiction of the National Assembly. Québec lives in a federal system and therefore has limited legislative jurisdiction circumscribed by the Constitution. The Supreme Court has confirmed the power of Québec, like all provinces, to legislate on the language of activities that fall under provincial jurisdiction<sup>62</sup>. It follows that the Charter does not apply to the federal government and the public agencies under its responsibility. Similarly, federal Crown corporations - such as Air Canada, Canada Post, etc. - follow the federal language regime and not those of provinces. Finally, the Charter does not apply to Indian reserves on Québec territory<sup>63</sup>.

Nor does the Charter govern the use of languages in international organizations located in Québec<sup>64</sup>.

## 2. The means the legislator has chosen to implement his language policy

The *Charter of the French language* is the main axis of Québec's language policy, but the Charter does not contain the entire policy. Other legislation completes it by converging with its objective or by guaranteeing the anglophone community access to numerous services in English. Within the framework of its policy on immigrants, Québec makes many efforts to foster the integration of immigrants into Québec society and to encourage them to learn the French language. Having the power to select independent immigrants - other than refugees and relatives - under the Constitution and administrative arrangements with the federal government, Québec tries to recruit candidates who, by their qualifications and profiles, are most likely to integrate into Québec society. To assist in this integration, Québec offers immigrants admitted to Québec the possibility of enrolling in French courses, an activity on which it spent \$35 million in 1994-1995<sup>65</sup>.

The *Charter of the French language*, as mentioned above, gave several public agencies the task of implementing the Charter. These agencies are the Conseil de la langue française, an advisory body, the Commission de toponymie du Québec, the Office de la langue française and the Commission de surveillance (de protection) de la langue française. In 1993, the government of Robert Bourassa decided to abolish the latter commission and transfer its powers of inquiry to the Office de la langue française. The overall budget of these agencies is now about \$20 million (in a total budget of \$42.4 billion in 1995-1996<sup>66</sup>). The amounts they have been allocated have been relatively modest, for their budget in constant dollars has decreased by about 20% since 1980<sup>67</sup>.

In a bill tabled in the National Assembly in June 1996, the government indicated that it intended to establish a Commission de protection de la langue française once again. This is because the Office de la langue française's concurrent duties of application and oversight prejudice the effectiveness of its actions and because overseeing compliance with the law would better be done by a separate agency.

When the Commission de surveillance (de protection) de la langue française existed between 1977 and 1993, the Commission itself and its investigation commissioners were given several nicknames. Some of the media dubbed them the "language police" or "tongue troopers". It should be noted that the Commission was in no way a police corps with the power to arrest and imprison. Nor was it an instrument of the criminal justice system. It was simply a government agency responsible for seeing to compliance with a law of a social nature. Moreover, the law gave the investigation commissioners what were essentially powers of inquiry similar to those it gives judges mandated to investigate. It was only when a commissioner found failure to comply with the *Charter of the French language* and when it was impossible to settle the difference out of court that he forwarded the file to the Attorney General, who then instituted penal proceedings under the law. It should be noted that the Commission developed pre-inquiry procedures with the aim of speeding up complaint processing and encouraging out-of-court settlements with offenders.

Between 1978 and 1991, the Commission de protection de la langue française received approximately 60 000 investigation requests. It gave notice to over 2000 business firms for failing to comply with the law and 123 business people were convicted in court. Legal proceedings were the exception, since 90% of the complaints were settled out of court and penal sentencing occurred in only 0.5% of the cases<sup>68</sup>. Issues related to commercial signs and product labelling led to the opening of most investigations. The greatest number of complaints - over 75% of the total - were made in the Montréal region. During the Commission's last years of activity, its budget barely exceeded two million dollars.

A complaint processing service was integrated into the Office de la langue française in December 1993 to replace the Commission, and some Office inspectors took over from the former agency's investigation commissioners and inspectors. In 1995-1996, only 847 of the 2176 complaints the Office received led to in-depth investigations and 97% of those ended in an out-of-court settlement. Only nine files led to penal proceedings<sup>69</sup>. For the 1996-1997 fiscal year, the complaint processing service had a budget of less than \$700 000.

### **3. Survey of some sectors of activity covered by the *Charter of the French language***

#### **a. Public signs**

Bill 86 of 1993 amended and relaxed the legislative regime for public signs in Québec for the third time. The Québec legislator maintained the principle of the mandatory presence of French in signs and posters and eliminated some restrictions on the use of another language. The new general principle in Bill 86 is that bilingual signs are allowed, whether inside or outside a commercial establishment, provided that French is markedly predominant. However, the law gives the government the power to determine, by regulation, the cases, conditions or circumstances where public signs, posters and commercial advertising may follow a principle other than the predominance of French. The law also specifies that its rules on posting do not apply to advertising in publications disseminating information in a language other than French, or to messages of a religious, political, ideological or humanitarian nature, provided they are not for profit<sup>70</sup>.

The government's regulations reveal its desire to modulate the application of the principle of marked predominance<sup>71</sup>. It tempers this application when safety or public health come into play, or to avoid disturbing the smooth running of business affairs. It prescribes French unilingualism only for the most visible advertising aids, such as billboards, and for advertising done on or in a public transportation vehicle.

French and another language can therefore appear equally, without French predominating, in all kinds of situations. This is so for museums, botanical gardens and zoos, cultural or scientific exhibitions, and tourist information kiosks. This is also the case for signs in transportation vehicles that travel both in Québec and outside Québec. Equal bilingualism is authorized for public signs about health or public safety and for international events. At conventions, trade fairs and international exhibitions, communications may be solely in a language other than French.

In an exception to the predominance of French, advertising must be in French only on billboards and large-scale signs installed away from commercial establishments. This rule also applies to advertising on a public transportation vehicle.

Unless it is done by a francophone media, advertising to promote a cultural product - a book, theatre, cinema, etc. - in a language other than French may be solely in that language. All indications of the country of origin, names of exotic products and specialties and non-commercial mottoes can remain in their language of origin, without translation. The same is true for registered trade marks and the firm name of a company established exclusively outside Québec.

As for firm names, the law requires that they be in French, without excluding their being accompanied by a version in another language. In this case, the firm name in French must be as prominent as the other.

For all signs to which the rule of the marked predominance of French applies, the visual impact of the French text must be greater than that of the text in another language. The regulation deems this impact to be greater when the text in French is allotted at least twice as much space as the text in the other language.

The part of the law that regulates commercial signs has given rise to the most controversy. This is also the part that the legislator has had to modify most frequently, seeking continually to create a "linguistic pact" between francophones and anglophones on new foundations. Commercial signs involve the most visible and symbolic aspects of language use in a society. Business firms and advertisements give the public space a "linguistic face" that is more or less the reflection of the society. It is this linguistic face that shows immigrants that they are in the presence of a majority culture and language. For a long time, the laissez-faire attitude toward signs in Québec, which favoured the preponderance of English, was based on the idea of two language majorities coexisting in Montréal. Immigrants could integrate into one majority or the other. And the linguistic face of the time did not coincide with Québec's sociolinguistic reality.

The main impact language legislation had on signs was to substitute the principle of the predominance of French for the principle of "two majorities" in people's attitudes. As Marc V. Levine pointed out, "*French predominance*" rather than "*two majorities*" is the starting point for all serious public debate in Québec on policies involving the linguistic character of Montréal or the province (free translation)<sup>72</sup>. That French has become the common language of Quebecers, particularly in commercial signs, is now firmly rooted in the minds of a majority of Quebecers, even if some members of the anglophone community challenge the idea or would like to return to the earlier laissez-faire system.

Recent polls have confirmed that a large majority of Quebecers are satisfied with the current legislation on signs and want to keep it as is. According to a Léger & Léger poll conducted in September 1996, 87.1% of Quebecers want to maintain the principle of the predominance of French in signs, while 11.1% would like to change the law<sup>73</sup>. A clear majority (80.5%) also feel that despite the protection the *Charter of the French language* provides, French continues to be very or somewhat threatened in Québec. Another poll conducted by Sondagem in August 1996 shows that 84.5% of respondents support the principle of the marked predominance of French in signs<sup>74</sup>.

Despite the public's attachment to this principle, it is not always applied, notably in Montréal. According to a study done by the Conseil and the Office de la langue française on the basis of a representative sample of business firms on the island of Montréal, 87% of commercial messages are drawn up in French, with 80% of those being in French only and 7% percent being bilingual. It has been estimated that 39% of Montréal business firms have an exclusively French image and 71% have a linguistic image that is largely French. The same study indicates that about 58% of business firms complied with the terms and conditions of sign standards<sup>75</sup>. A more recent study shows that Montréal's language landscape as reflected in commercial signs appeared to be stable in 1996. The proportion of business firms violating the law and the visibility of French and other languages in signs did not change significantly from 1995 to 1996<sup>76</sup>.

## **b. The language of instruction**

The *Charter of the French language* states that French is the mandatory language of instruction in kindergarten, elementary and secondary school classes. This principle holds for both schools run by school boards entirely financed by the Québec state and for private school that receive some of their funding from the government.

The Charter nevertheless makes an exception to this principle and gives several categories of pupils the right to instruction in English in public or private schools financed by the state under the same conditions as for French-language schools. In general, children whose parents, if Canadian citizens, received their elementary instruction in English in Canada may receive instruction in English. Children of citizens who received or are receiving their instruction in English in Canada, and their brothers and sisters, also have this right.

The Charter protects some acquired rights. Children who, at the coming into force of the law in 1977, had received their instruction in Québec or in Canada in English, retained the right to continue their studies in English, subject to conditions prescribed by the law.

The law recognized that the Aboriginal peoples of Québec could provide instruction in an Amerindian language. The languages of instruction of the Cree and Kativik School Boards are Cree and Inuktitut respectively, although English and French are taught as second languages.

Children with duly certified learning disabilities are exempted from the obligation of attending French school. The law also provides exceptions for people staying temporarily in Québec<sup>77</sup>. Employees of a foreign or Canadian business firm assigned to Québec for a

period not exceeding five years have the choice of language of instruction - French or English. Regulations also grant this exemption to researchers and students whose activities in Québec will not exceed a five-year period. Employees on temporary assignment, researchers and students may, if necessary, extend their five-year exemption by one year. Diplomats and employees of an international organization - such as the International Civil Aviation Organization located in Montréal - enjoy full exemption.

In general, the *Charter of the French language's* main impact on the language of instruction has been to send children of immigrants to French-language schools. As Marc V. Levine observed<sup>78</sup>:

*Finally, the most radical impact of Bill 101 on Montréal's French-language schools has been to introduce a function that urban schools throughout the United States and English Canada have performed since the mid-nineteenth century: integrating newcomers into the language and culture of the city's majority. As we have seen, through the mid-1970s, almost all of Montréal's ethnic minorities enrolled in English-language schools and the Island's French-language schools were composed almost exclusively of French Québécois. However, by 1987, as a result of Bill 101's impact on Allophone enrollments, the clientele in French-language schools was over 25 percent non-francophone and over 35 percent were not of French-Québécois ethnic origin.*

This was also the conclusion reached by a committee of experts and Québec senior public servants who submitted a report on the situation of the French language in Québec to the Minister of Culture and Communications in March 1996:

*We can attribute the enrollment of tens of thousands of students in French-language schools rather than in English-language schools directly to the Charter. This results from the legislator's will to make the French-language school the common school for the great majority of newcomers to Québec<sup>79</sup>.*

This displacement of allophone student enrollment gradually translated into a decline in student bodies at English-language schools in Québec. If the preschool, elementary and secondary cycles had about 256 000 pupils studying in English in 1971-1972, the anglophone student body dropped to 111 000 in 1994-1995, or 43% of the 1971-1972 level. It should be noted that the size of francophone student bodies also declined over the same period, the 1 036 000 francophone pupils in 1994-1995 accounting for only 75% of the 1971-1972 level. The lower birthrate and the abolition of the seventh year of elementary school explain this decrease<sup>80</sup>.

Statistics show that children whose mother-tongue is neither French nor English are more and more numerous in French-language schools. In 1971-1972, 85% of these children attended English-language school, 80% in 1976-1977, 36% in 1986-1987 and 21% in 1994-1995. In Montréal, 10% of allophone pupils were enrolled at French-language schools in 1971-1972. The proportion rose to 79% in 1994-1995<sup>81</sup>.

### **c. Language of work**

With the *Charter of the French language*, the freedom to communicate in French in Québec with public agencies and business firms, professional corporations and labour unions became a fundamental right<sup>82</sup>. The right of all Québec workers to carry out their activities in French was recognized. The Charter specifies that written communications between an employer and his staff must be in French. Similarly, collective agreements and arbitration awards are drawn up in French, the English translation of these awards not being excluded. The Charter prohibits the dismissal or demotion of an employee for the sole reason that he is exclusively French-speaking.

Statistics indicate the use of French has progressed in Québec business firms. In 1971, 42% of workers in the Montréal region generally worked in French. This percentage rose to 51% in 1979 and to 56% in 1989<sup>83</sup>. In the other regions of Québec, this proportion increased from 84% in 1971 to 88% in 1989. The francization of labour relations was also introduced into company management. In 1951, francophones held only 31% of executive positions in Québec, and anglophones, 60%. In 1988, the percentage of francophone executives had risen to 58%, with anglophones readjusting to 26%.

The *Charter of the French language* also charged the Office de la langue française with managing the francization process the Charter established. This program is intended to generalize the use of French at all levels of Québec business firms employing fifty people or more. The francization certificate issued to the firm attests to the use of French in its operations and its everyday communications. Spread out over time, progressive, planned jointly by the Office and the business firm, the francization process takes the firm's needs and constraints into account. The law provides that a language other than French may be used in the business firm's head office or

research centres. In this case, the firm must enter into a special agreement with the Office governing the use of French and other languages in the firm's research centre or head office. Less than 5% of business firms with 50 or more employees have opted for this special procedure.

Figures show a constant increase in the number of business firms that have obtained their francization certificate. 32.7% of large companies (100 people or more) were certified in 1984 and 68.3% in 1994. The level for small and medium-sized business firms (50 to 99 people) rose from 40.8% in 1984 to 84% in 1994.

#### **4. Services in English provided to the anglophone community of Québec**

The aim of the *Charter of the French language* is to generalize the use of French in the Québec public administration and its parastatal agencies, such as hospitals, other health services, school boards and municipalities. Unless otherwise indicated, its aim is not to restrict or prohibit the use of a language other than French in relations between the administration and citizens. In general, the prevailing rule in the administration and intermediary agencies is that the language of service is usually French, and that the level of services in English or in another language is a question of internal administration that the municipalities, hospitals and school boards determine in function of their clientele's needs.

The anglophone community has had its own social institutions - hospitals, school boards, colleges and universities - since well before Bill 101 came into force. It manages and improves them as it sees fit and they offer Québec's English-speaking population a varied and full range of services in English. The *Charter of the French language* did not intend to question either the continuity of these institutions or the principle of the freedom to provide services in the client's language. What changed was the provision that no Quebecer would be wronged by the lack of service in French and that the public acts of governmental and parastatal institutions be carried out in French, exclusively or concurrently with another language.

The *Charter of the French language* recognizes certain privileges for municipalities, school bodies and health or social services establishments that serve a clientele that speaks a language other than French in the majority. These bodies, which must be duly recognized by the Office de la langue française<sup>84</sup>, have some leeway in their internal operations that allows them to use both French and another language. The object of granting this recognition is not to create bilingual bodies or to authorize them to provide bilingual services, since all public agencies in Québec are allowed to do so, whatever their official status. The privileges that recognized bodies enjoy entitle them to post signs in French and another language, with French being more prominent; to have a bilingual name; and to use both French and another language in their internal communications and in communications they may have with other recognized bodies. Other bodies, those serving a clientele that is francophone in the majority, must for their part use French only in signs, have a name that is French only and carry out their internal written communications in French only. As we have seen, however, this does not prevent them from offering bilingual services adapted to the needs of their clienteles, as is the case of the City of Montréal or so-called "francophone" hospitals which can admit English-speaking patients and serve them in their language.

The latest statistics show that 107 municipalities in the Montréal region and the townships of southeastern Québec have special status under the law<sup>85</sup>. The same is true for 19 school boards and 83 health and social services establishments. These establishments, like all the others, receive the financing they are entitled to from the Québec government, since education and health in Québec are public services financed by Québec taxpayers.

More to sanction established practices than to create new law, the Québec legislator enshrined in the *Act respecting health services and social services* the right of English-speaking people to "receive health services and social services in the English language"<sup>86</sup>. To ensure implementation of this right, the government in May 1993 created an advisory committee of eleven members representative of the English-speaking population to work with the 16 regional committees. The regional health boards - the authorities administering health care in Québec's regions - see that this right is applied by drawing up a program for access to services in the English language. It should be noted that in 1993-1994, no complaints were filed with the health and social services department's commissioner for complaints on the grounds that a service was not available in English<sup>87</sup>.

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#### **D. Another language policy: the federal government's official languages policy**



One cannot appreciate the impact of the *Charter of the French language* and the legitimacy it now has in Québec without taking into consideration the fact that there are two language policies. Québec's policy has just been described. The other was decreed by the federal government. The two policies converge on many points to strengthen French. On other points, however, they pursue contradictory objectives that clash or cancel one another out. Competition between the two policies fuels the controversy and conflicts that the official promotion of French has sparked in Québec and Canada<sup>88</sup>. Unlike other non-sovereign states such as the Swiss cantons, the Belgian language communities or Puerto Rico, Québec does not have full jurisdiction over language. The federal government reserved broad powers in this matter for itself and adopted a policy of official bilingualism, declaring English and French equal as official languages of the federal state. In addition to exercising the authority and force of its laws, this government succeeded in enshrining in the Canadian Constitution language provisions that reinforce its policy which is backed up by the continuing action of the courts and interest groups.

It was subsequent to the work and recommendations of the Royal Commission of Inquiry on Bilingualism and Biculturalism that the federal Parliament adopted the *Official Languages Act* in the summer of 1969<sup>89</sup>. The law states that "French and English are the official languages of Canada" for everything involving Parliament and the federal government. English and French became equal in principle as languages of federal legislation, administration and the justice system. If laws and regulations continued to be published in both languages, as they had to be in compliance with the Constitution of 1867, many federal court judgments would henceforth have to be in two languages.

The law charged the federal administration with communicating with the public and offering its services in the two official languages in the federal capital, Ottawa, and in bilingual districts determined by the federal government. It extended and spelled out the language rights of the accused and parties to lawsuits before a federal court. Finally, it created the position of Commissioner of Official Languages, a senior civil servant responsible for the application of the law and investigating violations brought to his attention.

The federal Parliament adopted a new version of the law in 1988<sup>90</sup> in which is extended some rights. Thus federal courts other than the Supreme Court must ensure that a presiding judge understands the language of the person being tried without the assistance of an interpreter. The obligation to guarantee the availability of bilingual services was extended, under certain conditions, to federal government offices abroad.

The federal government made the most of the reform of the Constitution in 1982 to enshrine some principles of its language policy in the country's fundamental law. Designed to "repatriate" the power to amend the Constitution that was still at the Parliament of Westminster to Canada, a former English colony, this reform was carried out without Québec and despite its disagreement. The reform translated into a considerable loss of status and jurisdictions for Québec<sup>91</sup>. The recognition of French and English as official languages of the government and the federal Parliament were also enshrined in the *Canadian Charter of Rights and Freedoms*. The principle of the bilingualism of laws and judicial procedures as well as citizens' rights to communicate in French or in English with the federal administration were also enshrined, the latter right being a function of significant demand and the vocation of administrative services<sup>92</sup>.

Added to these provisions on the federal administration is the provinces' obligation to provide instruction to their francophone or anglophone minority in their own language<sup>93</sup>. This obligation is binding for the elementary and secondary levels, is carried out with the provinces' public funds and is applicable wherever the number of children so warrants. The right to instruction in the language of the minority may go as far as giving members of the minority control over their educational institutions, this right being subject as well to the presence of a sufficient number of children from the minority. These rights are executory before common law courts. Members of one or the other official language minority can therefore bring an independent action for redress and petition a court to order the province to guarantee their rights.

Federal language policy is supported by legislation, the Constitution and a policy to promote bilingualism in the federal public service. Adopted by the federal Cabinet in 1971, the policy was designed to increase the proportion of francophone public servants at all levels of the federal apparatus, up to the demographic weight of francophones in the federation (about 25%). Another objective was to translate working documents drafted in English nearly systematically into French and to promote at least the passive knowledge of French among anglophone public servants. Finally, the federal government set up numerous financial assistance programs to subsidize the activities of official language minorities. It also took the initiative to associate itself with the provinces to subsidize instruction for students of official language minorities and the learning of French or English as a second language. For several years, it also made funds available to official language minorities to finance legal challenges that members of these minorities launched to force the provinces to discharge the obligations constitutionalized in 1982<sup>94</sup>.

The federal official languages policy unquestionably contributed to enhancing the status of French in Canada, and its use also increased appreciably in the federal public service. Francophones who comprised 21% of the federal public service in 1969 saw this proportion rise to 28% in 1995<sup>95</sup>. The principles on which this policy is based, however, are far from being universally supported. The policy has encountered resistance and its impact has been limited, particularly in the provinces where French has become a marginal language. If the policy had the laudable objective of redressing the injustices francophone minorities have suffered, it nonetheless pursued an eminently political aim in that it served as an instrument of national unity for the federal government. As political scientist Kenneth McRoberts observed:

*Clearly, during the 1960s language policy was not developed simply in response to the demands of the Francophone minorities. (...) The real stimulus lay in the surge of nationalist agitation in Québec. Canada's new language regime was formulated as the centerpiece within a much larger project: the restoration of Canada's national unity. It was part of a new pan-Canadian nationalism, designed to counter the Québécois variant*<sup>96</sup>.

To fully grasp the scope of the federal language policy, one must understand that it is based on the principle of personality, that is to say that language rights are tied to individuals who are entitled to the rights and not to linguistic communities. This is the principle the Royal Commission of Inquiry on Bilingualism and Biculturalism retained in 1967, the principle that the federal government made its own in its *Official Languages Act* and thereafter enshrined in the Constitution in 1982. In so doing, Canada clearly rejected the principle of territoriality as the foundation of its language policy, even though a number of countries such as Switzerland, Belgium and Finland had applied it and have demonstrated its relevance<sup>97</sup>. (Curiously, the Royal Commission of Inquiry was inspired by the example of South Africa which settled language rights on the principle of personality, although South Africa's political system and linguistic situation were so different from Canada's<sup>98</sup>.)

It is also important to grasp the fact that culture and language tend to be dissociated in the policy framers' thinking. Language is seen as a simple tool of communication, freely chosen by the individual, not in itself the bearer of a culture nor borne by it. As the federal government clearly indicated in a 1977 policy statement: *language is a system of communication that is indispensable for government, politics, administration, law, education, business and so on*<sup>99</sup>. If Canada has two official languages, *Canadian culture is distinguished by its emphasis on diversification and its rejection of any countrywide uniformity*. In short, Canada has *no official culture*. Setting aside the existence in Québec of a distinct national community, the federal language policy sees Canada as a multicultural mosaic composed of "linguistic communities" to which "ethnic groups" of origins other than British or French integrate partially, encouraged as they are to "maintain their cultures" and "to retain a knowledge of their mother tongue." The policy on bilingualism thus works in conjunction with a policy on multiculturalism - it, too, enshrined in the Constitution of 1982<sup>100</sup> - that puts Canada's linguistic and ethnic groups on an equal footing.

Some observers of Canadian political life think that the federal government's decision to turn language rights, which for more than a century had been the fruit of a politically negotiated compromise between anglophones and francophones, into individual rights sanctioned by the Constitution and the law, had a number of perverse effects. In the opinion of André Burelle, former senior public servant in the federal government's federal-provincial relations office, the metamorphosis of language issues into individual rights resulted in uprooting "linguistic and cultural rights from their community medium" and "discrediting the very idea of a host society with a common culture into which new immigrants could integrate."<sup>101</sup> By cutting Canada off from its community roots, this policy runs the risk of atomizing Canadian society, Mr. Burelle thinks, and of ignoring "the need for communities as instruments for conveying language and culture."<sup>102</sup>

Another result of the official languages policy: creating a legal symmetry blind to the asymmetry of the situation of anglophones and francophones. In recognizing equal status for French and English and giving itself the mandate of supporting "two" official language minorities, the federal language policy lends credence to the idea that English and French are equally at risk in Canada and thus justifies the federal government's governing language use throughout Canada<sup>103</sup>. According to University of Ottawa professor Charles Castonguay, this formal equality presents English as an endangered language in Québec while he is of the opinion that it has maintained all of its assimilating power among both francophones and allophones<sup>104</sup>. Professor Leslie A. Pal of the School of Public Administration at Carleton University in Ottawa has pointed out that the federal language policy, based on the recognition of individual rights, shuts its eyes to numerous asymmetries:

*Whether policymakers like it or not, most francophones live in Québec. On the other hand, the number of anglophones in Québec is significant, and most of them are concentrated on the island of Montréal. Despite problems with Bill 101, however, the anglophone minority is incomparably better off than the francophone minority outside Québec. It has its own institutions, a strong base, and is*

part of the North American linguistic majority. Some have argued that Québec anglophones are not a minority in the true sense at all (Legault 1992). Yet the logic of rights as it has evolved in Canada is to ignore these asymmetries, and to encourage the consideration of these two groups as equivalent when they are not. Demographics matters less than history and abstract principle.<sup>105</sup>

Sociologist Hubert Guindon thinks the official languages policy, by taking up the conclusions of the Laurendeau-Dunton Commission, avoided attacking Canada's real language problems. It would have preferred supporting francophone minorities outside Québec in terms of an illusory bureaucratic ideal and increasing the influence of French in the federal public service rather than rearranging the rules of the language game in Québec more fairly for francophones. Moreover, Mr. Guindon thinks, this policy, by keeping the idea of free choice in schools alive in Québec, helped create "a climate of ambiguity in Québec for immigrants and uncertainty for big private companies."<sup>106</sup>

The allocation of the sums the federal government grants to the two official language minorities is a good illustration of how legal symmetry can produce unequal results. A study commissioned by the Commission nationale des parents francophones showed that Québec anglophones received 47.7% of the \$2.32 billion the federal government granted from 1970 to 1987, the francophone minorities outside Québec having received only 28.5%<sup>107</sup>.

Despite efforts to support francophone minorities outside Québec and the offer of increased bilingual services in the federal administration, the federal language policy did not succeed in halting the process of francophone assimilation outside Québec. When Ontario and New Brunswick are not factored in, the demographic weight of francophone minorities in the English-speaking provinces slipped below 3% between 1961 and 1981. (Even though Québec anglophones had emigrated toward other provinces in fairly large numbers since 1976, the Anglo-Québec community still came out ahead in linguistic exchanges, the users of the English language being more numerous than Quebecers whose mother-tongue was English<sup>108</sup>.) Even vested with constitutionalized rights to instruction, francophone minorities have had difficulty in executing their rights and have had to bring proceedings against their provincial governments. While the Supreme Court has rendered several judgments on these minorities' rights to instruction<sup>109</sup>, justice is slow in changing the reticence and attitudes people may have.

David J. Rovinsky of the Johns Hopkins University Center for Canadian Studies in Washington wrote that the promotion of official bilingualism in English Canada has met with growing opposition in the past few years fueled by the emergence of a new Canadian nationalism, resistant to linguistic duality and the recognition of special rights for minorities. This nationalism sees official bilingualism as a costly and inefficient policy contrary to the idea of equality among individuals<sup>110</sup>. In Mr. Rovinsky's words, "bilingualism now faces a difficult climate marked by hostility to government spending on behalf of special groups." Echoing the conclusions other experts have reached, he thinks that "the denial...that language is territorial is what makes official bilingualism either a waste or an irritant. This irritation is not the expression of an anti-French attitude but rather of impatience with a misbegotten policy."<sup>111</sup>

In brief, the federal government's official languages policy has had its critics, too, and opinions are divided as to its merits.

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## **E. Language legislation elsewhere in the world**

That the Québec legislator decided in the late 1960s to protect a minority language in North America is neither unusual nor out of the ordinary. In fact, if you look at laws and practices in various countries, you see that many states have regulated the use of languages on their territory or granted one or more the status of official or national language. Of the 6000 languages spoken around the world, 85 enjoy the protection of sovereign states. The protection of about thirty other languages depends on non-sovereign states such as Québec, Catalonia and Puerto Rico<sup>112</sup>.

A country's language policy may be expressed in its constitution and laws, or implicitly through usages generally observed in relations between the government and its citizens. As law professor José Woerhling has pointed out, although the American Constitution is silent on the status and use of languages, English has implicitly acquired the status of official language in the United States through the administration's federal legislation and practices<sup>113</sup>. American law professor Juan F. Perea writes that: *Despite the absence of federal laws declaring English to be the official language of our country, some federal laws do, in effect, produce this result.*<sup>114</sup> In the nineteenth century, several American states practiced a form of official bilingualism, German, French or Spanish having been recognized as the second language of the state or of instruction, together with English.

A study Québec linguist Jacques Leclerc conducted in 1992 enables us to assess the extent of the efforts different states have made to support their national language or languages<sup>115</sup>. (Mr. Leclerc sent a questionnaire to public servants, academics and representatives of 74 countries, asking them to describe their country's legislation on the status and use of languages. Some 200 of the 460 questionnaires sent out were returned duly completed.)

The study reveals that 53 languages have acquired the status of official language around the globe. English was official in 39 states (including federated states), French in 31, and German and Spanish respectively in 16 and 12 states. Of all the states surveyed in this study (129, including federated states), 50 recognized only one official language. This was the case for Australia, Austria, Denmark, France, Japan, Mexico, the Netherlands and Sweden. Official multilingualism was less frequent. Sixteen sovereign states, including Canada, Finland, Norway and New Zealand, recognize two official languages. Six sovereign states had three or four official languages, among them Belgium, federal Switzerland, the Seychelles and Singapore. Among non-sovereign states, 33 had a single official language, including California and the three language communities of Belgium. Official bilingualism existed in 21 non-sovereign states such as Fribourg (Switzerland), Puerto Rico, Val d'Aosta (Italy) and Hong Kong.

The study shows that unilingualism prevails for the promulgation of laws: 89 states use a single language, 33 use two languages and six states practice legislative multilingualism. In matters of the language of instruction, the inquiry revealed that in a majority of states - 71 states - parents were not free to choose the language of instruction for their children's education or that this freedom was not relevant. Among these states were Brazil, California, Spain, Fribourg, the Netherlands, the United Kingdom and Sweden. Another 54 states recognized this freedom of choice but made it subject to certain conditions.

As for the language of advertising, the study shows that English was the language used most often in 58 states and French in 49 states. While several states recognized bilingualism or multilingualism in commercial advertising, one language often dominated the commercial space, English and French being among the languages whose predominance was most frequent and the most widespread among the world's sovereign or non-sovereign states. Among the 129 states studied, 34% used only one language in advertising. This was the case in Australia, the Flemish and French communities of Belgium, Denmark, the United Kingdom, Maine and North Dakota. Fifty states have bilingual or multilingual commercial signs, but the languages are generally unequal, with one language dominating more than 80% of the commercial space.

Several non-sovereign states have some autonomy in language matters and have given one or more languages the status of official language or a special status. Several states in the United States have amended their internal constitutions to declare English their official language. This is so in Arizona, Arkansas, California, Colorado, Florida, Illinois and Virginia<sup>116</sup>. Others, without officializing English in their constitutions, have made the use of this language mandatory in government institutions, the legislature or courts of law, as Kentucky, Louisiana, Michigan, Missouri, New Hampshire, Nevada, New Jersey, Oregon, Pennsylvania, Vermont and Wisconsin have done. Some have prescribed the mandatory use of English as the language of instruction in schools, as Arkansas, California, North Carolina, Colorado, Connecticut, Idaho, Illinois, Maine, Minnesota, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania and Texas have done, although some of them have authorized the creation of bilingual programs or schools.

In Spain, the autonomous communities enjoy a degree of linguistic autonomy and can therefore promote a language other than Castilian, the country's official language. Catalonia thus sanctioned Catalan as the community's distinctive language and charged its government (the Generalitat) with encouraging the use of Catalan together with Castilian. The Catalan spoken in the Balearic Islands also enjoys the status of the distinctive language, like Galician in Galicia. The Basque country (Euskadi) has recognized Euskara, the distinctive language of the Basque people, as an official language with Castilian.

There are non-sovereign states that enjoy nearly full linguistic sovereignty. This is the case of Puerto Rico, the Swiss cantons and Åland province in Finland. Since 1952, Puerto Rico has had the status of a free state associated with the United States. With a population of over three million people, the overwhelming majority (95%) of whom are Spanish-speaking, the island of Puerto Rico had a regime of official bilingualism from 1902 to 1991. In May 1991, the Puerto Rican legislature put an end to this regime by declaring Spanish the only official language. Spanish became the language of legislation, administration and the justice system and the mandatory language of instruction. But official bilingualism was reestablished in January 1993.

In Switzerland, a federal country comprised of four linguistic groups - German, French, Italian and Romansh - with German being the majority (65%) language, cantons have broad jurisdiction in matters of language. In general, the Swiss cantons abide by the principle of territoriality, that is, the status and use of the country's languages is modeled on the need to preserve "areas of linguistic security". It follows that it is incumbent on the cantons, within their borders, to see to the preservation of the extent and homogeneity of their

linguistic territory. The reasoning underlying this principle is that each living language is bound to a territory and this territory's population. A language can only survive if it is spoken by a human community, itself bound to a territory<sup>117</sup>. Thus in the French-speaking cantons, newcomers - Swiss or foreign - must send their children to the French-language school, while in the German-speaking cantons, they send them to the German-language school. In short, the status and rights tied to a language are a function of the territory occupied by the linguistic majorities. It is this principle of territoriality that Belgium adopted to divide its territory into linguistic zones and to give its three linguistic communities - French-, Flemish- and German-speaking - full jurisdiction over language.

In Finland, the Aland archipelago inhabited by the Swedish minority has a special status. Since 1990, this province has enjoyed the status of a free state associated with Finland. Whether it is legislation, the justice system, advertising or instruction, Swedish is the province's sole language. In the words of linguist Jacques Leclerc, the great linguistic autonomy the archipelago has been granted gives it "a linguistic security similar to what one would normally find in a sovereign state, without it being necessary to enact protectionist or coercitive legislation."<sup>118</sup>

Protecting the national language is not the doing of plurilingual or non-sovereign states alone. Consider France whose National Assembly in August 1994 adopted a law governing the use of the French language in the Republic, French being declared "a fundamental element of the personality and heritage of France (free translation)."<sup>119</sup> In July 1996, the Portuguese-speaking countries met to found the community of lusophone countries (CPLP), its common objective being the defense of Portuguese<sup>120</sup>. In Germany, there is concern about the decline in the use of the German language in large German companies<sup>121</sup>.

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## **Conclusion: Language, identity and minority: resolving a difficult equation in a pluralistic democracy**

The *Charter of the French language* has often been depicted as a finicky, excessive, antiliberal, freedom-destroying law with questionable aims. But when you look more closely at it and examine its history, the many exceptions it makes to its principles, the means it uses and its real impact, another image emerges. You discover a law that is quite moderate, not at all exceptional in its processes and aims, using modest means and giving itself limited objectives, leaving aside various activities and spheres of social life. It is the work of a prudent legislator, quick to bring the law's action into line, to modulate it and to make it more flexible. The legislator continually seeks to strike a fair balance between the wish of the great majority of Quebecers to make French their common language and the legitimate interest of the anglophone community to maintain its presence in Québec and the continuity of its social institutions. This balance has never been fixed, and the Québec legislator has had to readjust the Charter more than once to account for the evolution of public opinion and court rulings.

In less than twenty years, the *Charter of the French language*, and all of the legislation that supports its aims, has become a necessary and useful law, a source of social peace. It has acquired a symbolic value affirming the new status of the French language and culture in Québec and their enduringness in Canada and in North America. Thanks to the Charter, the use of French has expanded into all sectors of social life in Québec, signalling to all Quebecers, francophones, anglophones and newcomers, that French is the common language, but not the only language. In this respect, Bill 101 has strengthened the civic bond, and French has become the key that opens the door to work and social life. Because it contributed to stabilizing the French language in Québec and enhancing its status and quality, it works toward social peace, keeping Quebecers from the disputes over language that troubled Québec in the late 1960s. Bill 101 also helped reduce the income gap between francophones and anglophones and opened administrative careers up to francophones, making it an instrument of social justice.

The work of the *Charter of the French language* has not been achieved without conflict, controversy or litigation. But however heated the controversy, discussion about the Charter's strengths and weaknesses has always taken place in a climate of verbal propriety and with respect for parliamentary democracy. It would be a mistake to think that state intervention in the matter of language, such as Bill 101 and the example of many other language laws around the world, is carried out to the detriment of individual freedoms. As Ramsay Clark, former Attorney General of the United States and an expert in international law, noted, language and culture are essential dimensions of the individual and must be numbered, like the classic freedoms, among the fundamental human rights<sup>122</sup>. Bill 101 in his opinion is an affirmative action program designed to protect "the fundamental right to culture and language."<sup>123</sup> He wrote in a legal opinion:

*Language as the most pervasive and comprehensive carrier of culture is a key determinant in the individual's understanding of self, the world and human values. Though inadequately articulated in the international corpus juris it is among the most fundamental of all*

human rights.<sup>124</sup>

The *Charter of the French language* may draw its strength - and its controversial nature - from the fact that it attempts to reconcile different, competing and incommensurable values. To borrow the concepts of the renowned historian of ideas Isaiah Berlin<sup>125</sup>, one can say that the Charter involves the "positive freedom" of a minority people in a federation seeking to assert itself as a political majority to regain control of its cultural future through its parliamentary institutions. It also involve the "negative freedom" of francophone and anglophone Quebecers for whom language in everyday use belongs to private life and is above all the area of their personal choices. Finally, it is the medium of the "desire for recognition" of a minority people who seems not yet to have found an appropriate political status within Canada and who has tried to emancipate itself from a political and social situation that, until the 1960s, had relegated French to second place. Reconciling these competing values, one as fundamental as the other, within a pluralistic democracy is a formidable challenge. There is no self-evident solution. As Isaiah Berlin put it so well, "The way out must therefore lie in some logically untidy, flexible and even ambiguous compromise."<sup>126</sup>

Addressing his party's national convention in September 1996, Premier Lucien Bouchard expressed the difficult equation the Québec legislator must solve in these terms:

*We are among democrats. We have the responsibility - in fact, the obligation - to protect the fundamental rights of our citizens. (...) What we can reasonably hope for, what we should relentlessly aspire to, is to devise a fair and stable linguistic arrangement to ensure that French endures in Montréal and Québec, to ensure the better integration of newcomers, while maintaining (...) the dynamism of the anglophone community.*<sup>127</sup>

The solution to this difficult equation is up to Québec and its democratic institutions, but it also depends in part on English Canada's attitude toward Québec, as *The Globe and Mail* journalist Ray Conlogue recently pointed out :

*It is natural for anglophones of good will to want to do something to "solve" the language problem. But the solution, if there is one, does not lie so much in a few English Canadians learning to speak French as it does in all English Canadians coming to recognize French. By that I mean that French must have constitutional and de facto recognition as being in every way the equal of the English language in this country, and not merely the object of a sort of patronizing survival. It also means that English Canadians cease criticizing and second-guessing the language laws and policies of Québec.*<sup>128</sup>

Philosophers and political thinkers have recognized that the aims and means of Bill 101 harmonize with the basic principles of liberal democracy. It is philosopher Charles Taylor's opinion that Bill 101 is based on a plausible and defensible interpretation of liberal democracy. It would be the expression of the desire for cultural survival of a population that, while advancing a public culture and a common language, guarantees its minority adequate safeguards for its fundamental freedoms<sup>129</sup>. The American political scientist Michael Walzer notes that Québec has chosen a formula of liberalism appropriate to its situation and in this:

*...most liberal nation-states (think of Norway, France, and the Netherlands as examples) are more like Québec than Canada. Their governments take an interest in the cultural survival of the majority nation... At the same time, they indicate their liberalism by tolerating and respecting ethnic and religious differences and allowing all minorities an equal freedom to organize their members, express their cultural values, and reproduce their way of life in civil society and in the family.*<sup>130</sup>

In an address to the Center for Strategic and International Studies in Washington, the federal Minister of Intergovernmental Affairs Stéphane Dion stated that Québec's language laws are more liberal than those of such irreproachable multilingual democracies as Switzerland and Belgium<sup>131</sup>. McGill University economics professor William Watson recently commented that all told, he would prefer a law protecting French that encroached at a lesser cost on some freedoms but guaranteed social peace to a linguistic laissez-faire system that set Quebecers against one another<sup>132</sup>.

Level-headedness, a sense of nuance and careful examination of the facts are necessary to appreciate the work and balance Bill 101 has achieved. It must be recognized, however, that this balance rests on a shaky foundation. Canada's political culture has changed since 1982. The adoption of the *Canadian Charter of Rights and Freedoms* gave rise to a culture of individualism and a patriotism of rights that encourage individuals to challenge legislative choices before the courts and to cast their social demands in the language of the law. Several observers of the Canadian political scene think they see in this new culture the emergence of a rhetoric of rights sometimes used for self-interested ends that tend to exacerbate conflicts rather than resolve or alleviate them. Thus language issues that had long been resolved in Canada, and notably in Québec, with the moderation and civility inherent to the parliamentary tradition

inherited from the British<sup>133</sup>, have often been transformed since 1982 into battles for individual rights brought before the courts<sup>134</sup>. A Québec philosopher has called the ever so slightly extremist discourse of certain unconditional belittlers in Canada of Bill 101 and Quebecers' national aspirations the *fundamentalism of rights*. The tone of this discourse, he thinks, harks back to the harmful religious passions of another age<sup>135</sup>.

Protecting human rights and freedoms is certainly an urgent necessity, and their violation calls for correction without delay by parliaments or by the courts. Let us acknowledge, however, that looking at everything in terms of individual rights can muddle the discussion, even inflame it, at the risk of losing sight of other fundamental values. As Claude Ryan, then Québec's Minister of Education and of Higher Education and Science, said in a speech in December 1989:

*To seek to settle our linguistic policy debates by invoking, in an exclusive manner, fundamental liberties conceived to be applied mainly for other matters is to risk engaging the country along an unrealistic path.*<sup>136</sup>

The competition between Québec's language policy and the policy the federal government adopted in 1969 further fuels the controversy surrounding the advancement of French in Québec and elsewhere in Canada. On one side is a policy Quebecers strongly support that wants to make French the common language of a political community, that sees language as both a linguistic and a cultural fact, and that invites immigrants to learn this language and the rudiments of a common public culture to better integrate into Québec society. On the other side is a policy that proclaims two official languages but no official culture, each being left to the individual's choice, native-born or newly arrived Canadians, and that sees the French-speaking minority as a linguistic group on equal footing with all of the other groups in a great multicultural mosaic. These visions clash, sending contradictory messages to Quebecers of all backgrounds.

Many think that better management of language issues in Canada involves adopting a formula similar to the principle of territoriality that would give Québec, like the other provinces, full jurisdiction over language<sup>137</sup>. Recognizing in Québec nationalism an essentially positive phenomenon, having nothing to do with Europe's 20<sup>th</sup> century experiments with nationalism, the German linguist Helmut J. Vollmer thinks that to survive, "French Canadians living in Québec need not only a strong provincial government, but one with specific powers in order to fulfil its function."<sup>138</sup>

It is plain to see that discussions about the *Charter of the French language* are not about to end. The interdepartmental committee on the situation of the French language issued the opinion that the objective of French as a common language has not really been reached and that the Québec legislator should intensify his efforts, strengthen his measures, to achieve it. A group of anglophone intellectuals, dissociating themselves from the discourse of some leaders of their community, have supported Bill 101 as it stands. They think that *Québec's language policy should reflect this reality and strengthen the perfectly reasonable assumption that French is the common language between Québec citizens with various mother-tongues* and that it *should be applied firmly and equitably, like any other legislation*<sup>139</sup>. In the report of the task force on revitalizing Montréal, Brian Levitt, speaking on behalf of several business leaders, expressed a different opinion: even if the legitimacy of Bill 101 is no longer in doubt, it would be preferable to make some of its requirements more flexible to better accommodate the business community and to take into account the globalization of markets which fosters manpower mobility<sup>140</sup>.

Should Bill 101 be strengthened and more resources allocated to achieve its ends or should it be kept as is, with some of its requirements even being made more flexible? There is no unanimity on these questions, as we have seen, and all theses are being defended. The Québec government has clearly indicated that it rejects extreme means and prefers pragmatism to inflexibility. As to how these discussions and the law will evolve, let us put our faith in parliamentary democracy which, as the great liberal British tradition teaches, works by the antagonism of ideas<sup>141</sup>.

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## Notes

<sup>1</sup> Charles Truehart, "Québec 'Language Police' to Resume Enforced Use of French", *The Washington Post*, July 14, 1996.

<sup>2</sup> Distinction used by journalist Gérald Leblanc to analyze the situation of Franco-Ontarians. "Les 500 000 francophones de l'Ontario", *La Presse*, September 22, 1996.

<sup>3</sup> Section 16(1), *Constitution Act, 1982*.

<sup>4</sup> Section 16(2), *Constitution Act, 1982*; *An Act Respecting the Official Languages of New Brunswick*, S.N.B., 1968-1969, c. 14; *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, S.N.B., 1981, c.1.1.

<sup>5</sup> *Official Language Act*, S.Q. 1974, c. 6.

<sup>6</sup> Section 133, *Constitution Act, 1867*.

<sup>7</sup> Section 93, *Constitution Act, 1867*.

<sup>8</sup> *An Act to Provide that the English Language shall be the Official Language of the Province of Manitoba*, S.M. 1890, c. 14.

<sup>9</sup> *Re: Manitoba Language Rights*, (1985) 1 S.C.R. 721.

<sup>10</sup> *R. v. Mercure*, (1988) 1 S.C.R. 234.

<sup>11</sup> *The Language Act*, S. Sask., 1988, c. L-6; *Languages Act*, S. Alb., 1988, c. L-7.5.

<sup>12</sup> These figures were taken from Marc Termotte, "L'évolution démolinguistique du Québec et du Canada" in *Éléments d'analyse institutionnelle, juridique et démolinguistique pertinents à la révision du statut politique et constitutionnel du Québec*, Document de travail n. 2, Commission on the political and constitutional future of Québec, 1991, pp. 239-329.

<sup>13</sup> Government of Canada, Commissioner of Official Languages, *Annual Report 1995*.

<sup>14</sup> Gouvernement du Québec, Conseil de la langue française, *Indicateurs de la langue du travail au Québec, édition 1994*, 1995, 156 p.

<sup>15</sup> Statistics Canada, "Quarterly Demographic Statistics", no. 91-002-xpb, April-June 1996, volume 10.

<sup>16</sup> Op cit 14. Figures for 1991, p. 6.

<sup>17</sup> Demolinguistic specialists habitually divide Canada into linguistic zones. See in particular Richard J. Joy, *Les minorités des (sic) langues officielles au Canada*, Montréal: C.D. Howe Institute, 1978, 15 p..Mr. Joy uses the concept of "bilingual" zone to cover Ottawa, Montréal and Moncton. The expression "intercultural contact zone" seems more correct to me, since these cities are distinguished more by the coexistence of language communities than by their bilingualism which is unequally distributed.

<sup>18</sup> The assimilation of francophones outside Québec into the anglophone majority is a phenomenon that has been observed for a long time. See the classic study by Richard J. Joy, *Languages in Conflict*, 1967, 145 p.

<sup>19</sup> See the preface to *Our Two Official Languages Over Time*, Commission on Official Languages, 1990, 40 p.

<sup>20</sup> On the challenge to the validity of this policy in Canada, see notably David J. Rovinsky, "Canadian Language Policy in an Age of Restructuring", *International Issues*, 38, no. 6, December 1995, pp. 56-70.

<sup>21</sup> Pierre-Étienne Laporte, "Les nouvelles stratégies en faveur du pluralisme linguistique à la fin du XXe siècle", paper given at "Le français, langue pour l'Europe" colloquium, Brussels, November 18 and 19, 1993, 19 p.

<sup>22</sup> Michel Brunet, "Historical Background of Québec's Challenge to Canadian Unity", in Dale C. Thomson, ed., *Québec Society and Politics: Views from the Inside* (Toronto: McClelland and Stewart, 1973, 272 p.), p. 40.

<sup>23</sup> Quoted by Robert Lacour-Gayet, *Histoire du Canada* (Paris: Fayard, 1966, 605 p.), p. 210.



- <sup>24</sup> Quoted by Guy Bouthillier and Jean Meynaud, *Le choc des langues au Québec 1760-1970* (Montréal: Presses de l'Université du Québec, 767 p.), p. 139.
- <sup>25</sup> Government of Canada, Report of the Royal Commission of Inquiry on Bilingualism and Biculturalism, *General Introduction. The Official Languages*, volume 1, Queen's Printer, 1967, p. 21.
- <sup>26</sup> Danielle Juteau, "L'État et les immigrés: De l'immigration aux communautés culturelles", in Pierre Guillaume et al, editor, *Minorités et État* (Bordeaux / Québec: Presses universitaires de Bordeaux, Presses de l'Université Laval, 1986, 276 p.), p. 40.
- <sup>27</sup> The federal government subsidized the transportation of European immigrants but it seems to have refused the same benefit to French Canadians. See Québec government, Ministère de la Culture et des Communications, Report of the Commission of Inquiry on the position of the French language and language rights in Québec, *The Position of the French Language in Québec Ethnic Groups*, Book 3, 1972, 557 pages, p. 63.
- <sup>28</sup> Yolande Lavoie, "Les mouvements migratoires des Canadiens entre leur pays et les États-Unis aux XIXe et XXe siècles: étude quantitative" in Hubert Charbonneau (dir.), *La population du Québec* (Montréal: Boréal Express, 1973, 110 p.), pp. 73-88.
- <sup>29</sup> Micro-data, Statistics Canada, Census of 1991.
- <sup>30</sup> William Tetley, "Language and Education Rights in Québec and Canada (A Legislative History and Personal Political Diary)" in Paul Davenport and Richard H. Leach (dir.), *Reshaping Confederation. The 1982 Reform of the Canadian Constitution* (Durham, North Carolina: Duke University Press, 1982, 329 p.) p. 218.
- <sup>31</sup> Québec government, Conseil de la langue française, op cit 14.
- <sup>32</sup> See Marc Termotte, op cit 12.
- <sup>33</sup> Jacques Henripin, "Questions démographiques et politiques", in Alain-G. Gagnon (dir.), *Québec: État et société* (Montréal: Québec/Amérique, 1994), pp. 281-304.
- <sup>34</sup> Québec government, Ministère de la Culture et des Communications, Report of the Commission of Inquiry on the position of the French language and language rights in Québec, *Le français langue commune, Enjeu de la société québécoise*, 1996, p. 54.
- <sup>35</sup> Jean-Claude Gémar, *Les trois états de la politique linguistique du Québec*, Dossiers du Conseil de la langue française, Éditeur officiel du Québec, 1983, 201 p., p. 76.
- <sup>36</sup> Québec government, Report of the Commission of Inquiry on the position of the French language and language rights in Québec, op cit 27, p. 159 and 170.
- <sup>37</sup> Marc V. Levine, *The Reconquest of Montréal. Language Policy and Social Change in a Bilingual City* (Philadelphia: Temple University Press, 1990, 285 p.), p. 4.
- <sup>38</sup> René Lévesque, "Québec Independence", in Elliott J. Feldman and Neil Nevitte (dir.), *The Future of North America: Canada, The United States and Québec Nationalism*, Harvard Studies in International Affairs, no. 42, Center for International Affairs (Cambridge, MA: Harvard University, 1979, 378 p.), p. 63.
- <sup>39</sup> Government of Canada, Report of the Royal Commission on Bilingualism and Biculturalism, *The Work World*, Book III (Queen's Printer: 1969), p. 559.
- <sup>40</sup> Jean-Claude Corbeil, *L'aménagement linguistique du Québec* (Montréal: Guérin, 1980, 154 p.), 48 p.
- <sup>41</sup> Québec government, Report of the Commission of Inquiry on the position of the French language and language rights in Québec,

*The Language of Work*, Book 1, 1972, pp. 151-152.

<sup>42</sup> Chapter 9, assented to on November 28, 1969.

<sup>43</sup> Chapter 6, assented to on July 24, 1974.

<sup>44</sup> *Le Soleil*, January 20, 1977.

<sup>45</sup> Québec government, Minister of State for Cultural Development, *Québec's Policy on the French Language*, March 1977, 109 p.

<sup>46</sup> *Charter of the French language*, S.Q., c. 5, 1977.

<sup>47</sup> See the *Act amending the Charter of the French language*, S.Q., c. 56, 1983.

<sup>48</sup> *Attorney General of Québec v. Blaikie et al.*, (1979) 2 S.C.R. 1016.

<sup>49</sup> *Attorney General (Québec) v. Blaikie et al.*, (1981) 1 S.C.R. 312.

<sup>50</sup> Section 23, *Constitution Act, 1982*.

<sup>51</sup> *Attorney General (Québec) v. Québec Protestant School Boards*, (1984) 2 S.C.R. 66.

<sup>52</sup> *Ford v. Québec (A.G.)*, (1988) 2 S.C.R. 712; *Devine v. Québec (A.G.)*, (1988) 2 S.C.R. 790.

<sup>53</sup> Ghislain Otis, "La justice constitutionnelle au Canada à l'approche de l'an 2000: uniformisation ou construction plurielle du droit?", (1995) 27 *Ottawa Law Review*, 261, p. 277.

<sup>54</sup> *Ford*, p. 780.

<sup>55</sup> Section 33, *Constitution Act, 1982*.

<sup>56</sup> *An Act amending the Charter of the French language*, S.Q., 1988, c. 54.

<sup>57</sup> *McIntyre* affair, CCPR/C/47/D/359/1989 and 385/1989/rev.1, May 5, 1993.

<sup>58</sup> *An Act amending the Charter of the French language*, S.Q., 1993, c. 40.

<sup>59</sup> Québec government, Ministère de la Culture et des Communications, *Le français langue commune. Promouvoir l'usage et la qualité du français, langue officielle et langue commune du Québec. Proposition de politique linguistique*, 1996, 77 p.

<sup>60</sup> Québec government, *Politique gouvernementale relative à l'emploi et à la qualité de la langue française dans l'Administration*, 1996, 9 p.

<sup>61</sup> *Ibid.*, p. 43.

<sup>62</sup> *Devine v. Québec (A.G.)*, (1988) 2 S.C.R. 790.

<sup>63</sup> Section 96.

<sup>64</sup> Section 92.

- <sup>65</sup> Québec government, Report of the interdepartmental committee on the situation of the French language, op cit 33, p. 154.
- <sup>66</sup> Québec government, Ministère des Finances, *Budget Speech and Supplementary Information*, 1995-1996.
- <sup>67</sup> Québec government, Report of the interdepartmental committee on the situation of the French language, op cit 33, p. 116.
- <sup>68</sup> Québec government, Report of the interdepartmental committee on the situation of the French language, op cit 33, p. 97.
- <sup>69</sup> Québec government, Office de la langue française, *Rapport annuel 1995-1996*, 1996, 45 p.
- <sup>70</sup> Section 59.
- <sup>71</sup> *Regulation respecting the language of commerce and business*, G.O.Q., Part 2, Vol. 125, No. 53, p. 6915; *Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language*, G. O. Q., Part 2, Vol. 125, No. 53, p. 6918.
- <sup>72</sup> Marc V. Levine, "Au-delà des lois linguistiques: la politique gouvernementale et le caractère linguistique de Montréal dans les années 1990" (*Beyond language laws: government policy and Montréal's linguistic character in the 1990s*), in M.V. Levine, Marc Termote, José Woerhling et al, *Contextes de la politique linguistique québécoise*, Dossiers du Conseil de la langue française, Éditeur officiel du Québec, 1993.
- <sup>73</sup> Richard Mackie, "Quebeckers want votes delayed, Most see no need to change law protection of French language, poll shows", *The Globe and Mail*, October 4, 1996.
- <sup>74</sup> Pierre O'Neill, "Une Charte renforcée, si nécessaire, Les Québécois préfèrent pour l'instant le statu quo linguistique" (*A strengthened Charter, if necessary, Quebecers prefer the linguistic status quo for the time being*), *Le Devoir*, September 3, 1996.
- <sup>75</sup> Jacques Maurais and Francine Gagné, *Le statut des langues dans l'affichage à Montréal en 1996*, Québec, Conseil de la langue française, 60 p.
- <sup>76</sup> Québec government, Conseil de la langue française, Office de la langue française, *L'évolution de la situation de l'affichage à Montréal, 1995 et 1996*, 1996, 29 p.
- <sup>77</sup> Section 85. Also see *Language of Instruction (Temporary Residents) Regulation*, G.O.Q., Part 2, Vol. 117, No. 3, p. 68.
- <sup>78</sup> Marc V. Levine, *The Reconquest of Montréal*, op cit 36, p. 142.
- <sup>79</sup> Québec government, Report of the interdepartmental committee on the situation of the French language, op cit 33, p. 136.
- <sup>80</sup> Ibid, pp. 130-131.
- <sup>81</sup> Ibid, pp. 135-137.
- <sup>82</sup> Section 2.
- <sup>83</sup> Québec government, Conseil de la langue française, *Indicateurs de la langue du travail au Québec - édition 1994*, 1995, 156 p.
- <sup>84</sup> Section 29.1.
- <sup>85</sup> Figures provided by the Office de la langue française.

<sup>86</sup> Section 15, R.S.Q., c. S-4.2.

<sup>87</sup> Roger Prud'homme, Mireille Marcil, *L'accès aux services de santé et aux services sociaux en langue anglaise pour les personnes d'expression anglaise du Québec* (Access to health services and social services in the English language for the English-speaking people of Québec), Ministère de la Santé et des Services sociaux, November 1995.

<sup>88</sup> The interdepartmental report on the situation of the French language, op cit 33, notes that this *competition in Québec between the finality of the Official Languages Act and the Charter of the French language can only be harmful to achieving the latter's objectives* (p. 42). Farther on (p. 209), the report specifies that these two laws pursue *antinomical objectives that send out contradictory messages and make the integration of allophones into the francophone majority more difficult*.

<sup>89</sup> S.C. 1968-1969, c. 54, assented to on July 9, 1969.

<sup>90</sup> *Official Languages Act*, S.C. 1988, c. 38.

<sup>91</sup> On this issue, see Marc Chevrier, *Canadian Federalism and the Autonomy of Québec: A Historical Viewpoint*, Études et documents, Ministère des Relations internationales, 1996.

<sup>92</sup> Section 20(1).

<sup>93</sup> Section 23.

<sup>94</sup> In force from 1978 to 1992, this program financed 95 legal challenges, 19 of which were heard by the Supreme Court of Canada. See Richard Goreham, *Language Rights and the Court Challenges Program, A Review of its Accomplishments and Impact of its Abolition*, Report submitted to the Commissioner of Official Languages, 1992, 48 p.

<sup>95</sup> Government of Canada, Commissioner of Official Languages, *Annual Report 1995*.

<sup>96</sup> See Kenneth McRoberts, "Making Canada Bilingual: Illusions and Delusions of Federal Language Policy," in David P. Shugarman and Reg Whitaker, *Federalism and Political Community* (Broadview Press, 1989, 478 p.).

<sup>97</sup> Also see *National Understanding: The Official Languages of Canada: Statement of the Government of Canada on the Official Languages Policy* (Ottawa: Minister of Supply and Services Canada, 1977, 78 p.). "The federal government rejects the concepts of a Canada divided into two mutually exclusive unilingual separate countries or two mutually exclusive unilingual regions within one country. While these two options have a superficial appearance of dissimilarity, they amount in practice to the same thing, a province or state of Québec that is unilingual French-speaking and the rest of Canada, or a truncated Canada, that is unilingual English-speaking." (p.41)

<sup>98</sup> See Kenneth McRoberts, op cit 93, and Government of Canada, Report of the Royal Commission on Bilingualism and Biculturalism, General Introduction, *The Official Languages*, Book 1, Queen's Printer: 1967, 212 p., particularly Chapter IV.

<sup>99</sup> Op cit 94.

<sup>100</sup> Section 27.

<sup>101</sup> André Burelle, *Le Mal canadien. Essai de diagnostic et esquisse d'une thérapie* (Montréal: Fides, 1995, 239 p.), p. 41.

<sup>102</sup> Ibid, pp. 66 and 67.

<sup>103</sup> Henri Brun and Guy Tremblay, *Droit constitutionnel*, 2<sup>nd</sup> edition (Cowansville, Québec: Les Éditions Yvon Blair inc., 1990), pp. 760-761.

- <sup>104</sup> Charles Castonguay, "Chrétien, Durham, même combat", *Le Devoir*, August 22, 1996.
- <sup>105</sup> Leslie A. Pal, "Language, Policy and Rights in Canada: Pragmatism v. Politics", *International Issues*, volume 38, no. 6, December 1995, pp. 38-55, p. 50.
- <sup>106</sup> Hubert Guindon, *Tradition, modernité et aspiration nationale de la société québécoise* (Montréal: Éditions Saint-Martin, 1990), p. 107.
- <sup>107</sup> "Enseignement des langues officielles. Les anglophones du Québec choyés par Ottawa" (*Teaching the official languages. Québec anglophones pampered by Ottawa*), *Le Soleil*, October 19, 1996.
- <sup>108</sup> See Louise M. Allaire and Réjean Lachapelle, *Demolinguistic Profiles of Minority Official Language Communities: A Demolinguistic Profile - Québec*, Secretary of State of Canada, 1990, 33 p.
- <sup>109</sup> In addition to a first judgment on the Québec anglophone community's rights to instruction, the Court rendered two judgments in 1990 and 1993 on the rights of official language minorities outside Québec. See *Mahe v. Alberta*, (1990) 1 S.C.R. 342; Reference *Re Public Schools Act (Man.)*, s. 79 (3), (4) and (7), (1993) 1 S.C.R. 839.
- <sup>110</sup> David J. Rovinsky, "Canadian Language Policy in an Age of Restructuring", op cit 20, pp. 56-70.
- <sup>111</sup> Ibid, p. 69.
- <sup>112</sup> Jacques Leclerc, "La souveraineté linguistique est-elle possible dans un État non souverain? Étude de quelques cas" (*Is linguistic sovereignty possible in a non-sovereign State? Some case studies*), *Bulletin d'information terminologique et linguistique*, Office de la langue française du Québec, number 69, summer 1993, pp. 1-5.
- <sup>113</sup> José Woehrling, Preface to François Gauthier, Jacques Leclerc and Jacques Maurais, *Langues & Constitutions, recueil des clauses linguistiques des constitutions du monde*, Les publications du Québec, 1993, 130 p.
- <sup>114</sup> Juan F. Perea, "Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English", *Minnesota Law Review*, 77, no. 2, 1992, pp. 269-373, p. 332.
- <sup>115</sup> Jacques Leclerc, *Les droits linguistiques dans 129 États du monde, Description thématique*, study submitted to the Office de la langue française, January 27, 1992, 402 p.
- <sup>116</sup> This list was based on a compilation of language clauses published in late 1993. New states may have been added since then.
- <sup>117</sup> On this concept and how it has been seen by Swiss jurists, see *Le quadrilinguisme en Suisse - présent et futur*, Analyse, propositions et recommandations d'un groupe de travail du Département fédéral de l'intérieur, Berne, August 1989, 333 p.
- <sup>118</sup> Jacques Leclerc, "La souveraineté linguistique est-elle possible dans un État non souverain?", op cit 109, p. 5.
- <sup>119</sup> Section 1, *Loi n. 94-665 du 4 août 1994 relative à l'emploi de la langue française*.
- <sup>120</sup> "Lusophones de tous les pays...", *Le Devoir*, August 26, 1996.
- <sup>121</sup> "Quand 'Business Week' fait de l'ombre à Volkswagen", *Wirtschaftswoche*, in *Courrier International*, no. 305, September 5-11, 1996.
- <sup>122</sup> The Member States of the Council of Europe agreed in February 1995 to a Framework Convention For the Protection of National Minorities, No. 157. Its preamble states "that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them

to express, preserve and develop this identity."

<sup>123</sup> André Picard, "Bill 101 protects human rights, U.S. expert says", *The Globe and Mail*, June 17, 1993.

<sup>124</sup> Ramsey Clark, *A Legal Opinion on International Law, Language and the Future of French Speaking Canada*, a legal opinion for the Mouvement Québec Français, New York, June 15, 1993, 24 p.

<sup>125</sup> See his article "Two Concepts of Liberty" in *Four Essays on Liberty* (Oxford University Press, 1969, 213 p.), pp. 118-172.

<sup>126</sup> See the same author, "Political Ideas in the Twentieth Century" in *Four Essays on Liberty*, p. 39.

<sup>127</sup> Lucien Bouchard, *Notes pour une allocution du premier ministre, Monsieur Lucien Bouchard, à l'occasion du Conseil national du Parti Québécois*, Trois-Rivières, September 7, 1996. Also see Lucien Bouchard, "Respect and Tolerance", *The Gazette*, September 11, 1996.

<sup>128</sup> Ray Conlogue, *Impossible Nation. The Longing for Homeland in Canada and Québec* (Stratford, Ontario: The Mercury Press, 1996, 175 p.), op cit 103, p. 122.

<sup>129</sup> Charles Taylor, *Multiculturalism and the Politics of Recognition* (Princeton University Press, 1992, 112 p.).

<sup>130</sup> Ibid, p. 100.

<sup>131</sup> Chantal Hébert, "Dion défend à Washington les lois linguistiques du Québec", *La Presse*, October 16, 1996.

<sup>132</sup> William Watson, "Language constraints a small price. Sign law compromise might by silly but is hardly unjust", *The Financial Post*, August 21, 1996.

<sup>133</sup> It is Gary Caldwell's opinion that Québec has a "social constitution" within the meaning of Edmund Burke and Alexis de Tocqueville, that is, a body of intellectual traditions making up the social life, which is threatened by the new Canadian political culture. This Québec social constitution has several distinguishing features, among them a heightened sense of civility, a certain egalitarianism as to values, a taste for private property, the possession of a national conscience, parliamentarianism and the existence of a cultivated cultural elite. See Gary Caldwell, "Le Québec ne doit pas se donner une constitution: il en a déjà une qu'il abandonnerait à ses risques et périls", *Philosophiques*, volume XIX, no. 2, fall 1992, pp. 191-198. Also see "Being English in a French Québec: on the denial of culture and history in a Neo-liberal state", *Language, Culture and Curriculum*, 1998, vol. 1, no. 3, pp. 187-196.

<sup>134</sup> Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson Educational Publishers, 1994, 542 p.).

<sup>135</sup> Jacques Dufresne, "Les preachers du *Financial Post*. Le fondamentalisme des droits", *L'Agora*, April 1996.

<sup>136</sup> Claude Ryan, "Address" in Daniel Bonin (dir.), *Towards Reconciliation? The Language Issue in Canada in the 1990s* (Kingston: Institute of Intergovernmental Relations, 1990, pp. 51-61), p. 59.

<sup>137</sup> Philippe Resnick, *Toward a Canada-Québec Union* (Montréal: McGill-Queen's University Press, 1991, 119 p.); John Richards, "The Case for Provincial Jurisdiction over Language", in John Richards, François Vaillancourt and William G. Watson (dir.), *Survival: Official Language Rights in Canada* (Toronto: C.D. Howe Institute, 1992, pp. 9-56); J. A. Laponce, "Reducing the Tensions Resulting from Language Contacts: Personal or Territorial Solutions", in Daniel Bonin (dir.), *Towards Reconciliation? The Language Issue in Canada in the 1990s* (Kingston: Institute of Intergovernmental Relations, 1990, pp. 125-131); The Task Force on Canadian Unity, *A Future Together: Observations and Recommendations* (Ottawa: Minister of Supply and Services Canada, 1979, 152 p.)

<sup>138</sup> Helmut J. Vollmer, "Competing Visions and Language Policies for Canada" in C.H.W. Remie, J.-M. Lacroix, *Canada on the Threshold of the 21st Century, European Reflections upon the Future of Canada* (Amsterdam/Philadelphia: John Benjamin, 1991, pp.

253-264), p. 260.

<sup>139</sup> Lubin Bisson, Robert Dean, Anne Michele Meggs, Donna Mergeler and Éric Schwimmer, "La politique linguistique doit refléter la réalité" (*Language policy should reflect reality*), *La Presse*, September 11, 1996. Also see Michel Venne, "Des anglophones dénoncent l'extrémisme de leurs leaders" (*Some anglophones denounce their leaders' extremism*), *Le Devoir*, September 5, 1996; Éric Grenier, "Forum Québec, French Kiss", *Voir*, September 5-11, 1996.

<sup>140</sup> Brian Levitt, "Langue et avenir politique du Québec: les deux talons d'Achille de Montréal", *La Presse*, October 31, 1996.

<sup>141</sup> John Stuart Mill, "Of Representative Government" in *Utilitarianism, Liberty, Representative Government* (London: J.M.Dent & Sons, 1972, 438 p.).

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